SENATE—*Wednesday, August 3, 1983*

(Legislative day of Monday, August 1, 1983)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

The PRESIDENT pro tempore. Our prayer today will be offered by the son of our Senate Chaplain, the Reverend Richard Christian Halverson, Jr., pastor, Chesterbrook Presbyterian Church, Falls Church, Va.

PRAYER

The Reverend Richard Christian Halverson, Jr., offered the following prayer:

Let us pray.

Heavenly Father, it is written that the destiny of men and of nations is in Thy hands.

Scripture says, "Both riches and honor come from Thee, and Thou rulest over all. In Thy hand are power and might; and in Thy hand it is to make great and to give strength to all."

Everyone who works in this assembly is here because you have divinely appointed and empowered them to carry out Your perfect plans. Each one is special and each has an ordained purpose.

Only You know the duration and outcome of their influence here. May it be long and profoundly felt to the glory of God and the peace of our Nation. In the name of Jesus Christ. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

ORDER FOR ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, there are two special orders this morning. I ask unanimous consent that following those two special orders and the leader time under the standing order, there be a period for the transaction of routine morning business not to exceed 15 minutes during which Senators may speak for not to exceed 3 minutes.

The PRESIDING OFFICER (Mr. COCHRAN). Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I reserve the remainder of the leader's time.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDING OFFICER. The acting Democratic leader is recognized.

NUCLEAR FREEZE IS NECESSARY BUT NOT SUFFICIENT

Mr. PROXMIRE. Mr. President, it is not enough for us to agree with the Soviet Union on a nuclear arms control treaty, no matter how carefully the verification procedures are worked out and no matter how comprehensively the treaty covers nuclear arms. The grim fact is that it will take many years to work out such a treaty. Indeed, it is likely that such a treaty can only be achieved in stages. And even if and when both sides agree on a comprehensive nuclear freeze, adequately verified, we will still live in a world of immense and explosive nuclear power that could ignite at any time and blow civilization off the face of the Earth. So, at the very best, over the next 30 or 40 or perhaps for 100 years or more we will be living with nuclear weapons in a tinderbox that could explode at any minute. We need the nuclear freeze to have any real hope of survival. But the freeze is not enough. Painful and boobytrapped as such an existence may be, we will need to find a way to live with the other superpower in peace. We will also need to find a way to work with the Soviet Union to stop the proliferation of nuclear weapons to other countries. Call it détente, call it whatever you will, we must find a way of living together in this little world and of cooperating where world peace is at stake.

Mr. President, most Americans, including this Senator, vigorously disagree with Soviet practices and policies. We deplore the Soviet Union's lack of genuine democratic elections with opposition parties and a press free of government controls. We condemn its cruel and ruthless policies toward dissenters and its bullying policies toward its neighbors like Poland, Hungary, and Afghanistan.

But for 65 years the Soviet Union has been an international fact of life. For the next 65 years it will very likely continue, unless we push each other into a nuclear catastrophe that will blow both the United States and the Soviet Union away as organized societies.

Can we simply agree to disagree on our form of government and our attitude toward the responsibilities and freedoms of our peoples and live as nations together in peace? Why in the world not? The United States and the Soviet Union have never been at war with each other. In fact, in our 200 years of existence as a nation, we have been at war with England several times, with France, with Germany, with Italy, with Japan, and many other nations, big and small, but we have never really locked horns with Russia, either when she constituted a massive empire under the czars or since Russia became the preeminent Communist state and for nearly 40 years our prime rival for leadership in the world.

But is not Russia as the Earth's dominant Communist country sure to be the leader of the Marxist-Leninist world revolution, by force and violence if necessary?

Well, that is the rhetoric. And many Russians as well as Americans believe it. But let us look at the record. Russia has, indeed, engaged in shameful aggression in the last 3 years but always with relatively weak neighbors: Hungary, Rumania, Poland, and Afghanistan. The Brezhnev doctrine has extended an old Russian thesis that Russia cannot permit forces hostile to it to come to power in governments that are geographically near Russia and have been supportive of Russia in the past. Whenever Russia has moved into military action against these neighbors, we have protested. We have threatened military intervention, as we did in Hungary. We have cut off wheat sales to Russia, as we did with Afghanistan. We have tried to stop industrial sales by our allies, as we did with Poland. But we have always stopped short of armed conflict. Similarly, the Russians threatened us in Cuba in 1962, and they threaten us today in Central America. They backed off in Cuba, and they are backing off now in El Salvador and Nicaragua. They persist with their shameful war of aggression in Afghanistan, but we have resumed our wheat sales to the Soviets. In fact, we sharply increased our sales of wheat. But Russia, either under the imperial czar or Communist leadership, has never in the last 200 years engaged in aggressive war against major powers. They have not picked on anyone their own size. And certainly this country and its NATO allies constitute a major military force confronting the Soviet Union. We are "their size" and then some. From their defeat by an invading Napoleon, through World War I

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

and World War II, the Russians have shown that they are, indeed, like many countries, big and small, a very formidable military force in defending their own territory. In fact, Russia's military emphasis has overwhelmingly stressed a defensive posture and does so today, with its heavily defended air space and its general confinement of its naval and air fleets to its own and neighboring territory. In fact, Russia has never been able to project an impressive force outside of its own home territory. And certainly their current military performance in Afghanistan is impressing no one.

In a recent book by Alexander Cockburn which I have mentioned before the floor of the Senate and will return to again, the military capability of the Soviet Union is sharply challenged. And if we judge by the Soviet failure to win over primitive, neighboring Afghanistan in the many months they have been at war, it seems most unlikely they could sweep to the Atlantic Ocean if they should choose to take on West Germany, France, and Italy, buttressed by the United States, in an attempted sweep to the Channel with conventional arms.

The fact that the Soviet Union has been careful not to send its troops beyond encounters with relatively weak neighbors, of course, does not mean that it has played a constructive role in world politics. The Russians have used support for guerrilla organizations in Africa, the Middle East, and South America as an extension of their foreign policy. They do so because it is an indirect means of influencing events and thus less risk than direct military intervention with Russian troops.

United States-Soviet cooperation must face up to this fact of life. Indirect subversion must be contained just as direct confrontation. Both run the risk of escalating into general warfare.

Finally, Mr. President, it appears that we have much less to fear from the Russians militarily than many including the administration would have us believe other than the ultimate catastrophe of a nuclear holocaust. Our purpose in the next few years, therefore, should be to work might and main to seek a peaceful relationship with the Soviet Union, recognizing the overwhelming mutual interest between this country and the Soviet Union in survival that dwarfs even our very real differences in human freedom and democracy.

A CRIME AGAINST HUMANITY

Mr. PROXMIRE. Mr. President, for many years I have urged this body to ratify the Genocide Convention. I live in constant wonder why over the past 34 years the Senate has failed to act on this important treaty.

I recently read a piece in Midstream entitled, "Eichmann in Elmwood," which shows the need to make genocide a punishable, international crime. The author, Samuel Hux, writes of how different groups of people perceived the German Holocaust and how it affected them. Hux writes:

> It requires nothing more to weigh the horror of the Holocaust . . . than to know that it was in intention a genocidal crime against the Jewish people.

However, he contends that the Holocaust was a crime against not just Jews, but all people.

As Americans reflect on Hitler's murder of 6 million Jews in Europe before and during World War II, we are shocked and outraged. The crime of mass murder with the intent to destroy an ethnic, religious, or racial group is often too horrible for us to comprehend.

The article in Midstream reaffirms the need for immediate ratification of the Genocide Convention. The author writes:

> But it seems not to be known by those people who think the Jews are too sensitive, paranoid, when in fact they are simply cognizant of this exposure, knowing that it is not unwise to wonder it one should expect the worst since something worse than the worst has already occurred once . . .

Acts of genocide have taken place far too often. History has borne witness to this heinous crime for many centuries—the Christians in Rome and the forced famine in the Ukraine are just two examples. As in the case of Germany, these events were crimes against all of humanity, not just the group that was the target for extermination.

The fact that the Genocide Convention evolved from the outrage of all decent human beings to the monstrous actions of the Nazis in attempting to eliminate every man, woman, and child of Jewish ancestry within their reach is apparent to everyone.

Of course, we all know how intensely—how deeply—the Jewish groups feel about the convention, and rightly so. But I think few Members of the Senate recognize how deeply this matter is felt by all denominations. This is not solely a "Jewish issue." Catholic and Protestant groups, most notably the National Council of Churches, have been outspoken in their support.

Mr. President, we here in the Senate can do our part to prevent the crime of premeditated mass murder by ratifying the Genocide Convention. Let us not wait for another Holocaust to occur before we are moved to action on this important treaty. I urge my colleagues to act without further delay.

THE ECONOMIC RECOVERY

Mr. BYRD. Mr. President, Monday's Washington Post carried a story by David Broder with the headline "Governors hear 2 views of the Strength of Recovery." I hear two views myself, one when I am in Washington and another when I go home to West Virginia.

The Washington view is a very cheery one, rose colored glasses and all that: The economy is growing at a rapid clip, employment is up, and inflation is down. Yet, many parts of the country are in difficulty. Last Friday, Utah Governor Matheson opened the National Governors' Association meeting and said:

> If there's an economic recovery out there, the effects on the states are certainly delayed. Most of us are still trying to control the hemorrhaging.

As to the picture in West Virginia, it is pretty dismal: Unemployment is 18 percent overall, employment in the primary industry is still 39 percent below what it was 2 year ago, and since April, 11,000 have exhausted their unemployment compensation benefits. So which view is right, the view inside the beltway or the view beyond the beltway? And which view should guide our approach to policymaking?

Clearly there is a kind of recovery occurring in the country. For a number of reasons—the natural resilience of the U.S. economy, congressional action to reduce the causes of high interest rates, and the belated abandonment of monetarism by the Federal Reserve—the country's worst postwar recession ended last winter, at least it has reached its lowest point in the valley, or appears to have in most ways. The end of the recession has removed the economy from the front pages of the national newspapers. It is not a front page story unless the sky is falling. The result is that the National Government—like the national media—thinks everything is fine at the end of every recession. When the next recession starts—as it inevitably does—the old stories come out once again and Washington again begins to search for antirecession programs, or at least antirecession statements.

This "Chicken Little" system is no way to run economic policy. It is too shortsighted and too narrowly focused. The view is not long enough to recognize that another recession will surely follow this recovery. The view focuses too narrowly on aggregate national statistics to recognize the problems of places like West Virginia and other States which have very high unemployment. The administration's view is that the recovery is the solution to our problems. My view is that the recovery, such as it is, provides an opportunity to solve the deep structural problems that beset our economy.

These structural problems are all too evident in West Virginia and they can be seen in the national statistics over the longer term. While unemployment rises and falls, the average rate has been climbing. Between 1960 and 1973, the average unemployment rate was less than 5 percent. The average unemployment rate for the last decade exceeds 7 percent and we will be lucky if the unemployment rate falls to 7 percent before the next recession sends it up again. Average wages, corrected for inflation, grew by 40 percent between 1960 and 1973. They have not grown at all in the last decade.

Unemployment and economic distress have been unevenly distributed and the gaps are widening. Some States and many cities have regularly experienced unemployment more than double the national rate and more than triple the rates of the best off areas. Some industries have experienced depression-like conditions.

The administration's macroeconomic policies are one major cause of the structural problems. The reliance on the monetary restraint in the face of excessive budget deficits has played havoc with interest-sensitive industries—such as autos and housing—and the industries—such as steel—that are their major suppliers. Production of iron and steel fell 63 percent from its prerecession peak to its recession trough. Primary metals fell 51.5 percent from peak to trough, autos 43.4 percent, lumber 32.2 percent, petroleum products 25.5 percent, and nonelectrical machinery 22.9 percent. Overall, the production of durable manufacturing goods fell 19.7 percent from its peak in 1979 to the recession trough in the fall of 1982. While these industries are experiencing a rapid recovery, a world-class industry that can excel in the international competition cannot be maintained with this degree of instability.

Indeed, the currently rising interest rates and the over-valued dollar may prevent full recovery before these industries again fall into recession. Alan Greenspan, a noted economist who often advises the Reagan administration, warned the Governors of this possibility. He predicted that the Nation's economic recovery will slow dramatically in the next 6 months because of continuing Federal budget deficits. The Democratic Governors echoed Mr. Greenspan's concern. They unanimously adopted a resolution by Michigan Governor Blanchard urging the President to "begin at once to focus increased attention" on growing Federal deficits stemming from policies "favoring the wealthy" and "causing undue hardship" on the poor. The Democratic resolution warned of the effects of high interest rates. If Mr. Greenspan's forecast is correct the interest-sensitive industries, and the communities in which they are located, will suffer a new decline before they have recovered from the last one.

These industries are not spread evenly throughout the country. Their decline is mirrored in the decline of communities and States in the industrial heartland, the so-called smokestack States. Workers dislocated from these industries have a difficult time seeing the recovery. Those who live in high-unemployment communities with a declining industrial base are likely to see their unemployment insurance run out before recovery brings any job back to them. Nor does it make sense to ask some of these workers, especially the older of them, to retrain and relocate in order to avoid falling into welfare.

The administration refuses to recognize that many of the problems reflect fundamental or structural difficulties. Let me list a few of them:

First, a structural deficit that will not disappear even with a recovery. A Federal budget that is even close to balance will require spending restraint on defense and a modification of the misguided revenue policies of this administration as well as economic recovery.

Second, an inability to coordinate monetary and fiscal policies so that interest rates can be both lower and more stable. The interest-sensitive industries cannot survive if tight money has to be relied upon to squeeze out the excess that oversized deficits create.

Third, a reliance on recession and economic pain to cure inflationary behavior. Surely there must be a way to bring management, labor, and Government together and solve the problems of competitiveness without using unemployment and bankruptcy as the main anti-inflation policies.

Fourth, the lack of mechanisms to coordinate international economic policies so that the value of the dollar is both stable and low enough to make American exports competitive in world markets. Neither labor nor management can adjust fast enough to keep up with a dollar that appreciates 35 percent relative to the yen.

Fifth, the inability to address the problems of industries and regions that cannot compete in world markets. We need a set of policies that increase our capacity to create and market new products and to adjust to changing technology and competitive conditions. We need policies that will prepare our people so that they can compete successfully in an uncertain future.

I intend to continue to speak to these long-run structural economic problems. My purpose is to remind the Senate and the administration that our economic house has a leaky roof that must be repaired during the sunshine of the current recovery. It would be irresponsible to wait until recession comes raining down once again. We must also make the structural changes for those, like many in my State of West Virginia, who have still to feel the benefits of the current recovery.

I thank the Chair. I yield the floor.

RECOGNITION OF SENATOR RUDMAN

The PRESIDING OFFICER. Under the previous order, the Senator from New Hampshire (Mr. RUDMAN) is recognized for not to exceed 15 minutes.

Mr. RUDMAN. I thank the Chair.

Mr. President, I will only use a minute or two of the special order time that has been allocated. Therefore, I ask unanimous consent that the remainder of that time be yielded to the majority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

FREEDOM FROM GOVERNMENT COMPETITION ACT

Mr. RUDMAN. Mr. President, the question of whether our Federal Government should produce for itself the commercially available goods and services necessary to its day-to-day operations, or should instead purchase the same from private sources, has been a subject of controversy since at least 1933. The issue appears no closer to resolution today than when first identified; if anything, it is more clouded. However, the importance of a final resolution cannot be understated. Not only is the amount involved considerable, the Government spent $32.5 billion for commercial goods and services in 1981, but the resolution will either reaffirm the economic theory which is the foundation of our country or herald a replacement of the same with a form, however minimal, of socialism.

In 1981, David Stockman, then the newly appointed Director of the Office of Management and Budget, declared that—

> The Reagan administration would welcome a clear statement of intent by the Congress in support of the policy that the Government should not compete with the private sector.

Many of us applauded that statement, firm in our belief that in areas other than the national defense and managerial capacity, the Government should procure its required, commercially available goods and services from the private sector. We saw in Mr. Stockman's statement a policy in keeping with the more traditional economic theories embraced by President Reagan.

Unfortunately, the case is not so clear. The latest draft of Circular A-76, the executive branch policy statement on what is known as the contracting out issue, after provision for exceptions for the national defense,

the nonavailability of private sources, and the provision of certain patient care, provides that the Government may perform a commercial activity if a "cost comparison * * * demonstrates that the Government *can* (emphasis added) operate or is operating the activity at an estimated lower cost than a qualified private commercial source." This exception continues the evolution of the cost/benefit argument that has clouded the competition issue for years. It is time we recognized that the issue of cost is unrelated to the principal issue of the propriety of Government competition with the private sector. If one accepts the proposition that the procurement of commercially available goods and services required by the Government is to be decided solely on the grounds of cost, one has already accepted the proposition that it is permissible for Government to compete with private enterprise.

Since there has never been a congressional vote on the issue of competition, the executive branch has been premature in establishing over the years a policy which focuses primarily on cost.

Recognition of the distinct nature and primacy of the competition issue is of great importance since acceptance of the cost/benefit resolution would represent a step back from the political and economic theory upon which our country stands. Advocates of the cost solution state that our citizens, especially taxpayers, are entitled to have their Government procure its required goods and services at the lowest possible cost, justifying Government competition if that result is achieved. However, note the fallacy implicit in the logical extension of this argument: If the Government can produce a good or service for less than the private sector, be it a bologna sandwich or medical care, the same should be offered to citizens so that they might benefit doubly, first as taxpayers and then as consumers.

This extension of the cost/benefit argument represents an embracing of socialistic theory: That economic and political theory which advocates governmental ownership and administration of the means of production and distribution of goods and services. While such theory is not evil in and of itself, adoption of the same should involve congressional action.

The fact that the cost/benefit argument represents a perversion of our traditional economic theory often seems lost on its proponents. They forget or misread the political and economic theory upon which our country was founded. What citizens are entitled to is the right to purchase goods and services, whether for themselves of for their Government, at a cost determined by undistorted economic laws relating to supply and demand. The freedom from distortion is the efficiency that our economic and political theories embrace; it is this efficiency to which our citizens are entitled.

Efficiency is not in itself synonymous with cost, although the two are related depending on distortions affecting supply and demand curves. If the Government demands a product or service that is in short supply, the initial cost may be high, and, at that point in time, it may well be that the Government, for reasons relating to economies of scale, might produce the good or service for less. However, our traditional economic theory tells us that high demand for a good or service, whether by Government or populace, will stimulate the supply of the product or service, increase competition within the private sector, and result ultimately in the lowest cost possible within the framework of our free enterprise system. It is this efficient operation of capitalist theory that the citizens of this country should demand. We recognize this truth in our antitrust laws; we should do not less with respect to unfair and unjustified Government competition within the marketplace.

Proponents of the cost theory may reply, "Ah, yes, but at least we are making progress and have a workable and beneficial theory in the cost resolution." However, that would be a misstatement of fact. The issue was first recognized in 1933 during congressional consideration of Government competition with private industry that had been spawned by the defense needs of World War I. Since that time, the main focus has been on the cost/benefit resolution. To what end has been that focus? In 1967, 60 percent of the commercial goods and services required by the Government were procured from the private sector. By 1981 that percentage had fallen to 40 percent. During the period 1975–77, a period of increased attention to the problem, less than 2 percent of more than 21,000 commercial or industrial activities carried on by the Government were terminated. Even with the present attention to the size of Government, the number of civil service employees increased by over 12,000 for the 2 years ended December 1982. A majority of these are involved in commercial activities.

Finally, numerous studies confirm what we should all know intuitively: Private firms can produce the commercial goods and services Government requires for less than their governmental counterparts. Estimated savings are in the $1 billion per year range. This should not surprise us: Approximately 71 percent of the commercial activities engaged in by the Government in competition with the private sector are in the fields of equipment upkeep, facility support, including janitorial, security, and food services, property maintenance, and automatic data processing; all are activities which have been contracted out extensively by private corporations for years.

What then is the proper resolution of the issue of Government competition with the private sector? It is simple and direct. With respect to any commercially available goods or services required by the Government, three questions should be asked:

First, is there a legitimate national defense requirement for the production or provision of the good or service? If so, the Government may produce or provide the same. If not;

Second, is production or provision of the good or service necessary to the legitimate managerial or fiduciary functions of Government? Again, if so, the Government may provide the same. If not;

Third, are there competitive private sources available to supply the good or service?

If the last question is addressed and answered in the affirmative, the citizens of this country deserve to have the Government procure those goods or services from the private sector. Procurement from the private sector represents the least possible distortion of the economy, stimulates private investment, creates jobs, and generates tax revenue. We owe it to the citizens of the country to adopt this as a stated national policy.

It is for this reason that I am today introducing the Freedom From Government Competition Act, an act which would codify the three questions that I have identified as proper to the resolution of the issue. I am confident that once my colleagues and the public know of this legislation, they will endorse it as a reaffirmation of the political and economic foundations of our Nation.

RECOGNITION OF SENATOR DIXON

The PRESIDING OFFICER. Under the previous order, the Senator from Illinois (Mr. DIXON) is recognized for not to exceed 15 minutes.

Mr. DIXON. I thank the Chair.

Mr. STEVENS. Will the Senator yield?

Mr. DIXON. Yes, of course.

Mr. STEVENS. Mr. President, I would like to yield to the Senator the time that remains from Senator RUDMAN. I understand that was yielded to me.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DIXON. I thank the distinguished majority whip.

S. 1730—THE SMALL BUSINESS COMPETITION IN CONTRACTING ACT OF 1983

Mr. DIXON. Mr. President, the legislation I am introducing today with bipartisan cosponsorship is known as the Small Business Competition in Contracting Act of 1983.

I ask unanimous consent that the RECORD at this time show the cosponsors, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

The cosponsors are as follows:

LIST OF COSPONSORS

Senator Kasten, Wisconsin.[1]
Senator Tsongas, Massachusetts.[1]
Senator Sasser, Tennessee.[1]
Senator Moynihan, New York.
Senator Ford, Kentucky.
Senator Hatch, Utah.[1]
Senator Riegle, Michigan.
Senator Pell, Rhode Island.
Senator Leahy, Vermont.
Senator Armstrong, Colorado.
Senator Boren, Oklahoma.[1]
Senator Metzenbaum, Ohio.
Senator Andrews, North Dakota.
Senator Sarbanes, Maryland.
Senator Abdnor, South Dakota.
Senator Boschwitz, Minnesota.
Senator Huddleston, Kentucky.[1]
Senator Mitchell, Maine.
Senator Pryor, Arkansas.

Mr. DIXON. Mr. President, this legislation has two main goals: First, to increase small business participation in the procurement process which would reduce costly noncompetitive procurements; and second, to broaden our Nation's industrial base for civilian and defense procurements.

Over the years, I am afraid, many Government procurement officials have come to view existing small business legislation and regulations as an unnecessay and intrusive burden, and for that reason have often failed to aggressively implement them.

The need for the kind of legislation we are introducing has never been greater than it is today. We must put an end to the routine use of noncompetitive procurements by Federal agencies, especially within the Defense Department. Many small businesses are ready, willing, and able to produce spare parts for major Department of Defense (DOD) systems at a fraction of the prices presently paid, but are prevented from doing so by DOD's noncompetitive procurement practices.

The draft audit report on the procurement of aircraft engine spare parts, prepared by the Office of the Inspector General, Department of Defense, under the section, "Competition and Spare Parts Prices," states:

The buying centers visited were not identifying potential sources of aircraft engine spare parts, and as a result, the DOD Breakout Program was not effectively implemented. Most spare parts expenditures continued to be on sole source procurements from prime contractors even though significant opportunities for breakout exist.

. . . By not challenging sole source procurements and taking other actions to improve the competitive status of spare parts, the buying centers paid premium prices to prime contractors. These contractors are not the actual manufacturers in most cases; therefore, the price included overhead and other mark-up factors that would not be paid if the parts were bought directly from the actual manufacturers.

The report further states:

Competitive procurement was restricted based on the recommendation of the prime contractor. The most common reason for restricting procurement was that the items were considered critical, thus requiring engineering source approval by the design control activity to maintain the quality of the item.

Whether the item itself could be successfully manufactured by another source or procured directly from the actual manufacturer was not evaluated by the Government engineering personnel. There was a reluctance by the engineers to consider alternate sources without the approval of the prime contractor.

In a memorandum issued on September 9, 1982, the Secretary of Defense directed maximum emphasis on competition procurement:

No type of purchase is automatically excluded from this decision to maximize competition and this direction applies regardless of the level of the requesting official or the importance of the subject matter of the contract. Particular attention should be given to those areas where the assumption traditionally has been made that competition is not available.

But the Secretary's directive did not seem to filter down to the procurement officer level. To quote again from the Inspector General's report:

. . . Engineers and technical personnel were reluctant to consider aircraft engine spares for breakout to a more competitive status because there was no confidence in the ability of anyone but the prime contractor to deliver a quality product.

The report further states:

Procurement personnel seldom challenged PMC codes. Of 430 contract files reviewed, 387 were coded for sole source procurement. No other method of procurement was considered even when the item was one where competition would be likely to exist. The major motivation for procurement personnel was the timely processing of documentation.

We are continually told that everyone in Government is for competition, but the conclusion of the Inspector General's Report is far different:

. . . The major motivation for procurement personnel was the timely processing of documentation. Sole source procurements are faster, easier and safer.

Mr. President, a September 4, 1980, study prepared by the Small Business Administration at the request of the House Small Business Committee showed savings to the Government of $6.7 million, or 38 percent, when 181 parts for the Air Force were broken out for small business competition.

The 181 parts broken out are a tiny portion of the 3.9 million spare parts purchased by DOD each year. Furthermore, the SBA report indicated that only 7.9 percent parts are presently purchased on an open competitive basis, leaving more than 3.6 million parts for future potential breakout.

If these 3.9 million spare parts, which cost the Federal Government approximately $10 billion per year, were competitively bid, and the savings approximated those in the SBA study, the Federal Government and the U.S. taxpayer could get the same products for about $4 billion less than they now cost. The General Accounting Office has reviewed and verified the potential savings SBA found could be expected from a breakout of those spare parts.

Another result of noncompetitive procurements that exclude small business is the present sorry state of our defense industrial base. In a December 31, 1980, report entitled, "The Ailing Defense Industrial Base: Unready for Crisis," the Defense Industrial Panel of the House Armed Services Committee pointed out that the private sector would be unable to increase production sufficiently to respond in a timely manner to a national emergency.

Aside from the billions that could be saved annually by reducing DOD's sole source procurement practices, the development of alternative sources of supply would significantly strengthen this Nation's ability to respond in time of crisis.

The inadequate number of second and third tier defense contractors has led to dangerously long production times for defense items and increasing dependence upon foreign producers for parts and components. These problems with the defense industrial base arise at a time when production capacity has never been more critical to national security. A nation's defense system is only as strong as the industrial base on which it must depend for everything from shoelaces to missiles.

Mr. President, the Senate Armed Services Committee in its report (S. Rpt. 98-174) which accompanied the recently passed DOD authorization bill, indicated that only 20 percent of more than $13 billion per year spent on spare parts is spent on a competitive basis. The report further requests that the services "* * * promote greater competition by increasing the number of manufacturers qualified to produce any particular part." The committee has asked for a report by January 1, 1984, detailing the plan to implement the committee's requests.

I applaud the committee for this act. However, we in Congress have seen many plans and have on record many reports from the early 1960's through 1983 detailing the problems with pro-

[1] Member, Small Business Committee.

curements. Now is not the time to wait for another report.

Mr. President, I ask unanimous consent to have printed in the RECORD a listing of these reports, which begin in 1959 and extend through 1983 and comment upon this fact.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

A PARTIAL BIBLIOGRAPHY OF GOVERNMENT ACCOUNTING OFFICE REPORTS ON DOD PROCUREMENT

1959—Action Taken to Assure Receipt of and Right to Use Contractor-furnished Drawings Acquired at Government Expense for Future Procurement of Military Items for the Air Force.

1960—Contractor-furnished Drawings for Procurement Purposes. B-133263, 1-29-60.

1961—Spare Parts Requirement, San Antonio. B-133019, 5-10-61.

Noncompetitive Procurement of Aeronautical Replacement Spare Parts. B-133396, 9-18-61; B-133396, 6-28-63.

1962—Procurement of Spare Parts and Assemblies for Support of Naval Aircraft. B-146727, 4-30-62.

1964—Increased Costs Resulting From the Procurement of Spare Parts Under Contracts for Relaxed Aeronautical Equipment. B-133396, 1-10-64.

1965—Unnecessary Costs Incurred in the Production of T 208 Telescope Mounts as a Result of an Inaccurate and Incomplete Technical Data Package. B-146972, 4-23-65.

Additional Costs Resulting From the Failure to Procure Parts Used in Overhauling Special Air Mission Aircraft Engines Directly From the Overhauling Subcontractor Curtiss-Wright Corp. B-146888, 1-6-65.

1966—Policy Guidance Strengthened on Direct Procurement of Components Needed by Contractors in Production of Weapon Systems and Other Major End Items. B-158604, 4-29-66.

Potential Savings Through Direct Procurement of Components Used in Production of Variable Timing Fuses. B-132977, 2-23-66.

1967—Potential Savings in the Procurement of Spare Aircraft Parts for Outfitting Aircraft Carriers. B-133118, 2-23-67.

1968—Need for More Competition in Procurement of Aeronautical Spare Parts. B-133396, 6-25-68.

1972—System for Buying Spare Parts for Initial Support of New Military Aircraft Needs Improvement. B-133396, 1-31-72.

1980—Air Force Procurements of Spare and Repair Parts for the ARC-164 Radio. (PSAD-80-59) b-198680, 7-14-80.

Noncompetitive Procurement of Aeronautical Spare Parts at the Oklahoma City Air Logistics Center. B-200136, 10-31-80.

1982—Combined Procurement of Spare Parts and Production Components Will Reduce Defense Weapon System Costs. (PLRD-83-17) B-209928. 12-15-82.

1983—Air Force Breakout Efforts Are Ineffective (PLRD-83-82) B-208191, 6-1-83.

Mr. DIXON. Mr. President, this figure does not include numerous congressional hearings and the military services' own reports.

Jacques Gansler, a former DOD official, asserted in his recent book, "The Defense Industry," that "the problem of the lower tiers of the defense industry may be significantly worse and even far more critical to the U.S. defense posture than even those at the prime contractor level."

The Small Business Competition in Contracting Act of 1983, which I have the honor of sponsoring with a great many cosponsors on both sides of the aisle, eliminates some of the major barriers to small business participation in the procurement process and encourages the essential use of competition in contracting.

Several small business groups have offered their strong support for this legislation: The National Tooling and Machining Association, National Federation of Independent Business, Small Business Legislative Council, National Small Business Association, and Small Business United.

Mr. President, I ask unanimous consent to have the letters from these fine organizations, endorsing this legislation, printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL TOOLING & MACHINING ASSOCIATION,
Ft. Washington, Md., June 28, 1983.

Hon. ALAN J. DIXON,
U.S. Senate, Washington, D.C.

DEAR SENATOR DIXON: We recently had the opportunity to review your draft legislation, the Small Business Competition in Contracting Act of 1983. On behalf of the 3,500 member companies of the National Tooling and Machining Association, we strongly endorse this excellent legislation.

For years, our members have tried to sell their products to the federal government, most particularly the Department of Defense. They have been stymied by procurement policies which prevent them from even bidding on defense procurement. While only 10 percent of the products are purchased through open competition, most of the remainder are purchased on a sole source basis, usually at exorbitant prices, from major corporations.

Despite numerous studies which all show the same results, i.e. 50 percent savings and greatly reduced delivery times from competitive procurements, no action has been taken to increase competition.

Despite the best of intentions of Defense Secretary Weinberger and his many fine predecessors, the "official" DOD policy of competitive procurement has been frustrated by low level bureaucrats who control the procurement process. The Department of Defense procured approximately 10 percent of its goods and services through open competition at the beginning of this Administration and that is the share which is procured competitively today.

Clearly, it is time for the Congress to assist the Administration in assuring more competiton. Your legislation should achieve that goal while simultaneously increasing opportunities for small business participation, saving billions of dollars of taxpayers' money, and helping reduce the federal deficit.

You have our deepest appreciation and our complete support.

Cordially,

WILLIAM E. HARDMAN,
Executive Vice President.
BRUCE N. HAHN,
Manager, Government Affairs.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, D.C., July 12, 1983.

Hon. ALAN J. DIXON,
Hart Senate Office Building, Washington, D.C.

DEAR SENATOR DIXON: The National Federation of Independent Business, on behalf of our membership of more than 500,000 small and independent business owners, is pleased to support your proposed legislation, the Small Business Competition in Contracting Act of 1983. We commend your efforts to promote the full and fair participation of small business in our nation's procurement system.

NFIB has long been an ardent advocate for a strong national procurement policy based on reliance on the private sector. We are also painfully aware that, even with such a policy, small business might still suffer from the bias inherent within some agencies against doing business with small firms. We therefore appreciate your recognition that a commonsense approach be taken regarding the mechanics of the procurement system, to insure that "competition" in contracting out means giving small businesses an equal chance to compete commensurate with their capabilities.

We look forward to introduction of the Small Business Competition in Contracting Act, and offer you any assistance we may provide in moving the bill toward enactment.

Sincerely,

JAMES D. "MIKE" MCKEVITT,
Director of Federal Legislation.

NATIONAL SMALL BUSINESS ASSOCIATION,
Washington, D.C., June 27, 1983.

Hon. ALAN J. DIXON,
U.S. Senate, Washington, D.C.

DEAR SENATOR DIXON: The National Small Business Association is pleased to give our endorsement to your draft legislation, the Small Business Competition in Contracting Act of 1983. We believe that this legislation will bring competition into the procurement process.

At this moment, the Department of Defense procures less than 10 percent of its goods and services through open competition. Much of the balance is procured from large prime contractors on a sole source basis. Every study performed by the service branches, as well as those by the Small Business Administration and the General Accounting Office, shows that savings average 40-50 percent when procurements are switched from sole source to open competition.

We applaud your efforts. Not only will your legislation save the federal government (and the taxpayers) billions of dollars each year, you will provide the 14 million small businesses in this country the opportunity to participate in the federal procurement process.

Sincerely,

HERBERT LIEBENSON,
President.

SMALL BUSINESS UNITED,
Waltham, Mass., July 26, 1983.

Hon. SAM NUNN,
Senate Small Business Committee, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR NUNN: Small Business United, a coalition of 15 regional, state and metropolitan trade associations representing more than 60,000 small businesses na-

tionwide, urges you to join in cosponsoring a measure to be introducted next week by Senator Dixon entitled the "Small Business Competition in Contracting Act of 1983."

Under current procurement practice, there are numerous procedure barriers erected which have the direct effect of reducing small business' maximum potential participation in the Federal procurement process. In addition, by the admission of many of the Federal procurement agencies themselves, there is a critical lack of access to basic technical data relating to upcoming procurements which prevents anyone in the private sector from fully competing for Federal contracts. It is this competition that will best insure that the government gets a quality product or services it needs on time, at a fair price.

In addition, this bill contains several important provisions that build on the current administrative efforts of the Department of Defense to increase small business participation in the spare parts, and component bidding segments. This is an area that is receiving a great deal of attention because of the prices DOD appears to have paid for routine commerical items.

For all of these reasons, Small Business United fully supports Senator Dixon's legislative efforts. We hope that you will join as an original cosponsor on this significant and timely small business matter.

Sincerely,

JOHN C. RENNIE,
President.

Mr. DIXON. Mr. President, by increasing the use of competitive procurement practices, the bill will effectively decrease escalating Federal costs. The increase in the number of small businesses participating in the procurement process will also result in reduced expenditures while expanding our country's industrial base. The active participation of small businesses across the Nation in the total Federal procurement process, particularly defense, will enable the distribution of Federal procurement dollars to be more equitable and efficient.

This legislation represents an aggressive response to a problem that has been with us for too long a time. All of us have open minds, however, concerning the solution to the problem. All of us look forward to hearing suggestions on how the proposed legislation might be improved. To that end, I hope to see hearings begun on the Small Business Competition in Contracting Act of 1983 in the fall, and hope that his bill will become law before the end of the 98th Congress.

Mr. President, I ask unanimous consent that the text of the bill, as well as a section-by-section analysis of its provisions, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1730

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Small Business Competition in Contracting Act of 1983".

PURPOSES

SEC. 2. The purposes of this Act are to—

(1) increase small business participation in the procurement process;

(2) reduce costly noncompetitive procurements;

(3) increase the capabilities of our industrial base to meet the demands of defense and civilian agency procurements; and

(4) reduce barriers in the Federal procurement system which discourage or prevent increased participation in bidding.

CERTIFICATE OF COMPETENCY

SEC. 3. Section 8(b)(7) of the Small Business Act is amended—

(1) by inserting after "specified in the spending sentence," in the second of subparagraph (A) "including the use of qualified bidders or similar lists,";

(2) by inserting "or subcontract if the contract exceeds $100,000 or the approved limits of a contractor's procurement system, whichever is greater" after "contract" each time it appears; and

(3) by adding at the end thereof the following:

"(D)(i) A Government procurement officer may not refuse to include a product of a small business concern or group of small business concerns on a 'qualified products' or similar list without referring the matter for final disposition to the Administration. The Administration shall add a product to a 'qualified products' or similar list only where the procuring agency's refusal to include such product is without a reasonable basis directly related to satisfying the minimum needs of the Government.

(ii) Where there is only one product on a 'qualified products' or similar list, the procuring agency may reimburse the reasonable costs incurred by a small business in qualifying a product of its manufacture.

"(E) Notwithstanding the first sentence of this section, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed.".

LABOR SURPLUS AREA SUBCONTRACTING PLAN

SEC. 4. Section 8(d)(6)(A) of the Small Business Act is amended by inserting before the semicolon at the end thereof "and for the placement of subcontracts within labor surplus areas pursuant to section 15 of this Act".

COMPONENT BIDDING

SEC. 5. (a) Section 8(d)(1) of the Small Business Act is amended by adding at the end thereof the following new sentence: "It is further the policy of the United States that small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the award of Federal prime contracts and subcontracts for appropriate portions of component systems, spare parts, and services for major weapon systems.".

(b) Section 8(d)(3)(A) of the Small Business Act is amended by adding at the end thereof the following new sentence: "It is further the policy of the United States that small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the award of Federal prime contracts and subcontracts for appropriate portions of component systems, spare parts, and services for major weapon systems.".

(c) Section 8 of the Small Business Act is amended by adding at the end thereof the following new subsection:

"(f) During the planning for contracts for the procurement and performance of services, or the production or assembly of goods for major weapon systems, the head of each military department or agency shall take such steps as necessary to develop its requirements so as to maximize competition for those components or services where competition is available, and so as to insure that, to the maximum extent practicable, small and small disadvantaged businesses are not precluded from performing as prime contractors and subcontractors on such contracts.

"(g) As used in this section, the term 'major weapon system' means any weapon system the estimated cost for the development or production, or both, of which is not less than $100,000,000.".

(d)(1) The amendments made by subsections (a) and (b) shall take effect on the date of enactment of this Act.

(2) The amendment made by subsection (b) shall take effect immediately upon enactment, and shall be included in all contracts required to contain the clauses contained in paragraph (3) of section 8(d) of the Small Business Act which are awarded on or after 90 days following the date of enactment of this Act.

ACCESS TO SOLICITATIONS AND TECHNICAL DATA

SEC. 6. Section 8(e) of the Small Business Act is amended—

(1) by inserting "(1)" after "Sec. 8(e)"; and

(2) by adding at the end thereof the following new paragraphs:

"(2) In addition to the requirements of paragraph (1) of this subsection, and in order to further carry out the requirements of paragraph (1) of this subsection and section 223(a) of the Act of October 24, 1978 (Public Law 95-507, 15 U.S.C. 637b), each Federal agency shall publicly post and otherwise reasonably make available for inspection to any small business concern, or to the authorized representative of such concern, the bid set, specification, solicitation, purchase request, or other similar documents relating to the agency's solicitation to purchase goods or services. Nothing in this section requires the agency to disclose information on such solicitation prior to the publication of the notice pursuant to paragraph (1) of this subsection, if any. Nothing in this section requires an agency to disclose its estimate of the contract price or cost, or to otherwise disclose information which for security reasons are of a classified nature.

"(3) In addition to the requirements of paragraph (1) of this subsection, and in order to further carry out the requirements of paragraph (1) of this subsection and section 223 (a) of the Act of October 24, 1978 (Public Law 95-507, 15 U.S.C. 637b), and upon payment of the direct search and duplication costs, if any, each Federal agency shall make available to any small business concern, or to the authorized representative of such concern, copies of Government-owned technical data. For data which would require a validated license in the event it is to be exported, before the release of any such information, the concern requesting the data may be required to first certify to

the satisfaction of the agency that it is a domestic concern, that the data will not be exported without a license, and that it will provide for the payment of recoupment costs, if such costs are imposed under the Arms Export Control Act. For data which for security reasons are of a classified nature, before the release of any such information, the concern requesting the data may be required to first certify to the satisfaction of the agency that such concern possesses the necessary clearances for access to such information.".

TECHNICAL DATA

SEC. 7. Section 2386 of title 10, United States Code, is amended—

(1) by striking out "Funds" and inserting in lieu thereof "(a) Except as provided in subsection (b), funds"; and

(2) by adding at the end thereof the following new subsections:

"(b)(1) Except as provided in paragraph (3), funds appropriated to a military department to be available for the development or production (whether by a domestic or foreign contractor) of any major weapon system shall also be used for the acquisition of all manufacturing data relating to such system.

"(2) Each contract entered into by any military department after the date of enactment of the Small Business Competition in Contracting Act of 1983 for the development or production of any major weapon system shall contain provisions necessary to carry out the purposes of paragraph (1), including conditions under which the contractor waives proprietary rights with respect to any manufacturing data necessary for the performance of a production contract. The distribution of rights in data made by small business firms and domestic nonprofit organizations under funding agreements with such department shall be the same as that applied to small business firms under chapter 38 of title 35, United States Code. For patented items developed at private expense, the Government shall purchase only a license to use such data for competitive procurement of all or part of a particular major weapon system and the contractor shall retain all of the rights in the data.

"(3) Except for the distribution of rights in data as provided for in chapter 38 of title 35, United States Code, any military department may, at any time after the initial development and testing of any major weapon system, waive the application of paragraph (2) with respect to any manufacturing data, other than data originated at Government expense and later modification of such system, if that military department notifies the Committees on Armed Services and Small Business of the Senate and the House of Representatives of the reasons for the waiver not less than 30 days before such waiver takes effect.

"(c) Within one year after the date of enactment of the Small Business Competition in Contracting Act of 1983, each military department shall develop a system that accounts for the access to and ownership of all manufacturing data for major weapon systems within each department's jurisdiction. Within three years after the date of enactment of the Small Business Competition in Contracting Act of 1983, the Secretary of each military department shall complete an inventory of the Government's access to, or ownership of, all manufacturing data for each major weapon system within each Secretary's jurisdiction.

"(d) As used in this section—

"(1) 'manufacturing data' means all data, in whatever form, (including, but not limited to, necessary drawings, test data, reliability data, system acceptance methodology, and related computer application software) which is necessary to carry out the manufacture, maintenance, and modification of the major weapon system concerned; and is in a form sufficient to enable competition for the production maintenance or modification of such system; and

"(2) 'major weapon system' means any weapon system the estimated cost for the development or production, or both, of which is not less than $100,000,000.".

REPORT BY COMPTROLLER GENERAL

SEC. 8. Three years after the enactment of this Act, the Comptroller General of the United States shall transmit to the Congress a report evaluating each military department's efforts to compile an inventory of the Government's access to, or ownership of, all manufacturing data for major weapons systems within each department's jurisdiction as required by the amendments made by section 7(2) of this Act. Such evaluation shall also include a detailed review of those instances where the military department uses the waiver provision authorized by the amendments made by section 7(2) of this Act.

REMEDIES FOR DISCLOSURE

SEC. 9. Section 1498 of title 28, United States Code, is amended by adding at the end thereof the following:

"(e) Whenever information which is protected by law and held by the United States Government or a private party subject to restriction imposed by the owner is disclosed by or for the United States Government, or any of its officers, or agents in violation of such restrictions, the exclusive remedy of the owner is to sue the United States Government for reasonable and entire compensation for such use or disclosure in the Claims Court within six years after the cause of action arises. For the purposes of this subsection, the use or disclosure of such information by a contractor, a subcontractor, or any person, firm, or corporation for the Government shall be construed as use or disclosure for the United States. In any such suit, the United States Government may plead any defense that may be pleaded by a private person in such an action.".

PROCUREMENT RULEMAKING

SEC. 10. Section 553(a)(1) of title 5, United States Code, is amended by inserting before the period at the end thereof the following: ", except that such exemption does not apply to general notice of proposed rulemaking relating to the system for Government contracts and subcontracts".

OVERVIEW AND SECTION-BY-SECTION ANALYSIS OF THE "SMALL BUSINESS COMPETITION IN CONTRACTING ACT OF 1983"

Following is a brief overview, and section-by-section analysis, of the "Small Business Competition in Contracting Act of 1983."

SECTION 3: CERTIFICATE OF COMPETENCY

THE ISSUE

Under current law, a contracting officer in a procurement agency is charged with the responsibility for reviewing the qualifications of bidders on Federal contracts. In evaluating bidders' responses to that contract, even where a firm is the low bidder, a contracting officer may still question the capability or eligibility of that low bidder to perform that specific contract. Where the firm is a small business, the final determination of "competency" to perform that contract rests by law with the Small Business Administration.

During World War II, many contracting officers repeatedly refused to award contracts to small business concerns because they believed these concerns to be incapable of performing on these contracts. However, these same firms would subsequently serve as subcontractors to large businesses on those same Federal contracts. With a concern for the lack of a broad defense industrial base from which to sustain the war effort, and the proven underestimation of the capabilities of small businesses to meet the needs of the Federal Government, Congress enacted legislation taking away from the contracting officer the final determination of a small business concern's capability to perform on a specific contract, and give that authority to the Small Business Administration.

Recently, however, Federal procuring agencies, and the Small Business Administration, have taken administrative action which has the effect of undercutting the Congressionally-established procedures for an alternative review to the contracting officer's questioning of the competency of a small business to perform on a contract.

For example, many Federal agencies have established "qualified bidders" lists. Basically, the agency imposes a requirement on firms to be put on these approved lists before being able to bid on certain types of Federal procurements. If a firm is not on this list, the contracting officer has sole authority to determine that the business is not "responsive" to the bidding invitation, and makes no evaluation of the specifics of the bid. If there is no evaluation of the bid, there can be no finding that a smaller concern is an "otherwise low bidder," and thus there is no basis for a referral to the Small Business Administration for their determination. Similarly, agencies have established "qualified products lists" which have the effect of limiting the types of products that the Federal Government will purchase. Here again, with the initial determination that a product sought to be provided by a firm is not on the "list," the contracting officer never makes the evaluation of the qualification of the product.

In addition, the Small Business Administration has established a rule that, even where a contracting officer makes a determination that a small business concern lacks "competency" to perform on a contract, the SBA will not undertake an independent review of that competency if the value of the contract is less than $10,000. There is no dollar threshold in current law below which SBA may refuse to undertake the competency review on the request of the small business concern.

DIXON BILL

Under the Dixon legislation, Federal procuring agencies would be precluded from using qualified bidders lists or qualified products lists as a means of denying small business access to the Federal procurement system without a referral to the Small Business Administration for their review of the competency of a small business low bidder. In addition, the bill prohibits the Small Business Administration from declining to undertake a "competency" review at the request of a small business concern based on the dollar value of the contract referred to it by a contracting officer. Finally, the Dixon proposal insures that, to the extent that the Government exercises authority to

approve in advance a subcontractor on a prime contract, that department may not deny the use of that subcontractor without referral of that matter to the Small Business Administration for that agency's review.

SECTION 4: LABOR SURPLUS AREA SUBCONTRACTING PLAN

THE ISSUE

Under current law, the Federal Government has established a policy of providing "maximum practicable opportunities" for small businesses to participate as subcontractors on contracts awarded by the Federal Government. In Federal contracts in excess of $500,000 (or $1 million for construction) each prime contractor (except a small business) is required to develop and submit to the Federal Government a "plan" which demonstrates that company's "best efforts" to place subcontracts with small and small disadvantaged businesses. However, the law does not require the contractor to provide a plan for the award of subcontracts in areas of high unemployment.

DIXON BILL

Under the Dixon bill, an additional requirement would be imposed on the prime contractor to demonstrate a plan for placing subcontracts in designated areas of high unemployment (called "labor surplus" areas and designated as such by the Secretary of Labor).

SECTION 5: COMPONENT BIDDING

THE ISSUE

Of the $150 billion in Federal procurement purchases, frequently the Government will seek to contract for an entire weapons systems, or major subsystem. The contract will ask the prime contractor to be responsible for obtaining all of the necessary components for the system, and integrating them into the single, final product. However, the Federal Government also has a policy of taking steps to increase the opportunities for small businesses to participate in the performance of contracts awarded by the Federal Government as prime contractors. Thus, to the extent that the Federal Government relies on a single contractor to provide all of the goods and services under one contract, that action directly diminishes the ability of small business to participate in contracting. In these large contracts, small business simply lacks the ability to perform the total contract, and is precluded from fully participating in any of the subparts of that total Federal effort. As a result of the Government's conscious effort to "bundle" a variety of needs or parts into a single contract, the opportunities for price and quality competition are reduced, the opportunities for small business to participate in the process as prime contractors are reduced, and the opportunities for the Federal Government to develop alternative sources of supply for its requirements are also reduced.

Obviously, there are legitimate issues of contract management that justify using a single contract as compared to multiple contracts for certain procurements. But frequently, the choice of the most appropriate means for reaching a procurement goal is the result of convenience, not the result of planning.

DIXON BILL

In addition to the current statutory policy of the United States that small and small disadvantaged concerns have the maximum practicable opportunity to participate in the award of Federal contracts, the Dixon bill would add a further policy statement that small businesses shall have the maximum practicable opportunity to participate in the award of Federal prime contracts and subcontracts for appropriate portions of component systems, spare parts, and services for major weapon systems.

In addition, the bill would add a new section to the Small Business Act to provide that, during the planning of contracts for the procurement of services, or the production and assembly of goods, the head of each agency shall take all practicable steps to develop those procurement requirements in such a way so as to maximize competition for those components. The underlying principle, as stated in the bill, is to insure that, to the maximum extent practicable, procurement planning is done with a view so that small and small disadvantaged businesses are not precluded from performing as prime contractors and subcontractors on such contracts.

SECTION 6: ACCESS TO SOLICITATIONS AND TECHNICAL DATA

THE ISSUE

Under current law, there is a requirement that, on request, each Federal procuring agency must provide a small business a copy of bidding information available about the Government's specific purchasing request. There are also a number of statutory and regulatory provisions which give potential Federal contractors notice of the Government's intention to buy goods and services. One of these regulatory practices is to publicly post notice of procurement opportunities in the actual bid rooms of procurement activities.

In recent months, a number of Federal agencies have begun imposing, or increasing, the dollar levels below which these notices will no longer be posted. These public notices are heavily relied on by small businesses, and their authorized representatives who review these postings on an almost daily business. In fact, there is an entire industry, primarily composed of small businesses, that act as agents for other small businesses to provide immediate information about upcoming procurement opportunities in which firms may have an interest and ability to participate. Of course, there are legitimate instances where public posting of procurement information may not be possible or practicable, and these situations will have to be carefully addressed in the legislation.

DIXON BILL

Under the Dixon bill, unless the disclosure of information would be a breach of security, or would disclose the Government's cost estimate for the procurement, Federal agencies shall publicly post, and otherwise reasonably make available to small business, information concerning the agencies' solicitations.

Frequently, a business concern will be interested in a particular Federal procurement, but needs to review diagrams or drawings before being able to adequately prepare a bid on that solicitation. The bill provides that, as long as there is no security or Arms Export Control Act reason for not releasing this information, upon the payment of the direct search and duplication costs, if any, the Government shall provide the concern with this information.

SECTION 7: TECHNICAL DATA

THE ISSUE

When the Federal government purchases major weapons systems, it frequently assists in the development of those systems through the award of contracts for research and development. Once a system has been tested, and if Congress approves, the next step could be production. However, frequently Federal agencies do not provide for the Federal purchase of "technical data packages" that are an essential element of any manufacturing process. Many General Accounting Offices, departmental, and independent evaluations repeatedly acknowledge that Federal agencies do not know what technical data they possess, or fail to make provisions to purchase the package of technical information from the contractor responsible for the production. As a matter of basis contract management, the Government should include the purchase of the complete technical data package for any sophisticated system that it purchases if there is any reasonable possibility that additional purchases of that system, or its spare parts, may be possible. Agencies should always have the option to undertake a competition for weapons and spare parts, in particular, as well as for any major defense or civilian system. Without the technical information, the agency is virtually precluded from conducting any competition for that system.

DIXON BILL

The Dixon bill provides specific authority to the Department of Defense to use funds appropriated for the development or production of any major weapons system to purchase, or otherwise acquire all manufacturing data relating to that system. In addition, every future contract for the development or production of any major weapons system shall contain specific provisions for insuring the Government's acquisition of that technical data package, including, if necessary, conditions under which the contractor waives proprietary data necessary for the performance of that contract. In instances where the Department determines that technical data is not necessary, a waiver authority is provided for, but such waiver would be effective only after notifications has been sent to the Congress of the need for such waiver.

Finally, the bill provides that, within three years after enactment, each military department shall complete an inventory of the technical data which the Government has in its possession, or to which it has access. In addition, within that three year period, each service shall develop a system to provide for the accounting and ownership of technical data which the Government obtains in the future.

SECTION 8: REPORT OF COMPTROLLER GENERAL

THE ISSUE

Given the vast amount of technical data involved in the development and production of weapons systems, there are likely to be some difficulties with this cataloging and systems development effort. The General Accounting Office has previously made several detailed reviews of DoD spare parts and technical data procedures. GAO should continue its efforts in this area.

DIXON BILL

Under the Dixon bill, the Comptroller General of the United States is directed to undertake a review of the federal agencies' efforts to compile an inventory of the technical data in its possession, or to which it has access, and the systems developed to provide for the continuing accounting of that technical data.

SECTION 9: REMEDIES FOR DISCLOSURE

THE ISSUE

Under present practice, if a Federal contracting officer makes a mistake in disclosing information to a contractor or bidder which is protected by law, any party adversely affected by that error in disclosure has a wide range of legal options available to prevent the contractor from using that information, even if the contractor obtained the information in good faith and without knowledge that it was protected

DIXON BILL

The Dixon bill would provide that the exclusive remedy for the violation of protected information by the Government would be a suit in the Court of Claims for damages. This would treat errors of disclosure in the same manner as patents and copyrights are treated for Federal procurement. A similar approach has been used in the area of foreign military sales.

SECTION 10: PROCUREMENT RULEMAKING

THE ISSUE

Under current law, agency procurement rules are not covered under the Federal Administrative Procedures Act. Therefore, agencies are not required to publish notice in the Federal Register of their rules and procedures. In addition, there is no formal mechanism for public comment about an agency's procurement regulations. Many agencies voluntarily publish notice of significant changes in their procurement regulations in the Federal Register; others do not. Recently, the Office of Federal Procurement Policy issued a policy letter urging agencies to increase their outreach to the private sector for comments on significant procurement rules. However, even with these efforts, because procurement rules are not covered by the Administrative Procedures Act, agencies are not required to comply with the Regulatory Flexibility Act, for example.

DIXON BILL

Under the Dixon bill, Federal procurement rulemaking would be covered under the Administrative Procedures Act, including the procedures for notice and opportunity for public comment. In addition, the current statutory exceptions for using the APA procedure would be fully incorporated.

Mr. BOREN. Mr. President, it is with a great deal of pleasure that I join with my other colleagues in cosponsoring this legislation introduced by my good friend from Illinois, Senator DIXON. I want to commend him for these efforts that will open up the DOD procurement process to more of our Nation's small businesses.

As has often been said by myself and other on this floor, small business is the backbone of our economy. It is well documented that the vast majority of new jobs are created by small businesses. New and innovative technology comes mostly from small business research and development. It is only fair that we attempt, through this legislation, to increase the opportunities for small businesses to participate in the procurement process.

I am particularly pleased about this bill's attempt to reduce the instances of costly noncompetitive procurement. Events recently reported in the press have driven home the consequences of some sole source contracts. Instances of unconscionable overcharges for simple, everyday items has made us painfully aware of the abuses that are possible. By making the procurement process more competitive, it is hoped that these problems can be avoided.

Support for this legislation from many small business associations has been widely circulated and reported. This broad support is further evidence of the need for this legislation.

This bill is a good starting point. It will allow small businesses to enter a field of procurement from which they have mostly been excluded.

I urge my colleagues to lend their support to this legislation so that we can have early hearings and move it to the floor for, hopefully, eventual passage.

Mr. SASSER. Mr. President, I take great pleasure in joining my good friend from Illinois, Senator DIXON, as an original cosponsor of the Small Business Competition in Contracting Act of 1983. This important piece of legislation addresses several very serious concerns in the small business community.

Many small firms have shunned the Federal procurement process in the past for a variety of reasons. Small business owners have been concerned about the redtape and paperwork involved in Government contracts. They are worried about competing with corporate giants. And perhaps the most vocal reason raised for this lack of participation has been the sense of unfairness which hangs over the award process.

The difficulties encountered by small business in the procurement process are in part traceable to the attitudes of procurement officials. These individuals have often grown comfortable in their existing buying habits and do not wish to go through what they feel will be the extra effort necessary to process applications from small businesses. The emphasis seems to be on timely procurements with little regard for cost or quality, as we are discovering.

As a result of these factors, small businesses receive a mere trickle of the vast Federal procurement budget. The Tennessee small business community only received $537 million in procurement dollars in fiscal year 1982. This amount is a meager four-tenths of 1 percent of the total Federal procurement budget for that year.

The legislation we are introducing today, Mr. President, addresses many of these concerns. For example, the bill increases small business participation in the procurement process by precluding Federal agencies from using qualified bidders lists which deny small business access to procurement activity without prior referral to the Small Business Administration, as dictated by law. This legislation also closes further loopholes which procuring agencies have used in recent years to avoid the certificate of competency process for small business.

This bill will also do much to reduce the high costs of procurement contracts, especially in the area of defense contracting. This is an area of special interest to me, Mr. President, as I feel the contracting habits of some of our Federal agencies and departments constitute an intolerable form of waste and abuse of taxpayer's money.

For example, a 1981 SBA study on small business and the Federal procurement process stated that the Government could save up to 40 percent on procurement costs by allowing small businesses to enter the bid process. The General Accounting Office did followup work on this report and found that the SBA's estimates for potential savings were conservative and would in fact be greater than 40 percent.

Our legislation speaks to this issue by giving small businesses greater opportunities to participate in major weapons systems, component systems and spare parts procurements. As my colleagues are well aware, these are areas where immediate cost saving efforts are called for. In this sense, this bill is a most timely measure.

In addition, this legislation addresses several other areas of great significance in the procurement process including access to solicitations and technical data. Finally, the measure requires a report by the Comptroller General to Congress 3 years after its enactment in order to facilitate review of compliance with the act.

What we are introducing today is the first step in addressing many of the difficulties in the Federal procurement process which have hindered and prevented small businesses from competing effectively for procurement contracts. By confronting these problems we are offering the Federal Government an opportunity to save billions of dollars per year in procurements. Furthermore, we are underscoring the important role small firms play in creating new jobs, generating technological advances and paving the way to economic recovery. I urge my colleagues to support this important piece of legislation.

● Mr. KASTEN. Mr. President, as a member of the Small Business Committee, I have repeatedly seen the need for mechanisms to promote small business participation in the Federal procurement process. Firms that want to bid are sometimes unable to do so because of a lack of accurate information about an agency's specifications for a product or a service. At other times, businesses find they cannot bid on a contract because it is being let on a noncompetitive basis, or because

their interest is in only a component of a much larger contract.

The bill we are introducing today, which I am delighted to cosponsor, takes a large step toward addressing the problems I have mentioned. The Small Business Competition in Contracting Act would require Federal agencies to make more information about their contracts available to businesses. It would stimulate competitive bidding and facilitate small business participation in the sale of spare parts and components for major weapons systems. The measure also includes a mechanism allowing us to check on its effectiveness, by requiring the Comptroller General to report to us every 3 years to determine if agencies are complying with the legislation.

The bill has received a good deal of support. The National Federation of Independent Businesses had endorsed the idea, as has the National Small Business Association, the Small Business Legislative Council, and the National Tooling and Machining Association. In addition, the bill has received bipartisan support here in the Senate.

We need to take steps to increase procurement efficiency, thereby cutting Federal spending. We need to allow greater small business participation in the procurement process, thereby stimulating the economy. We need to encourage competition, thereby promoting improvements and advances in the goods and services that the Government purchases. These are all important goals. When we can help achieve them with one piece of legislation, we should not hesitate to adopt it immediately. That is why I urge my colleagues to join us in supporting this much needed proposal and put it to work at once.●

● Mr. BOSCHWITZ. Mr. President, I rise as a cosponsor of the Small Business Competition in Contracting Act of 1983, introduced today by my distinguished colleague from Illinois, Senator ALAN DIXON.

We in Congress are all aware of the importance of small business to our national economy, and the competitive ability they bring to producing the goods and services that the Government buys. The Federal Government is a big buyer of goods and services from the private sector—over $100 billion a year. About 25 percent of that goes to small business. We in Government must work to insure that small business gets its fair share of the pie. Senator DIXON's bill does just that.

This legislation improves small businesses' chances at landing Government contracts and subcontracts by addressing what I believe are three important issues.

First, this legislation would end the practice of using qualified bidder and products lists as a way to disqualify small businesses from Federal contracts. As a result, a firm would be eligible to bid on contracts even if it is not on the list. Instead, the Small Business Administration would review the competency of a small business low bidder. Also, no review would be denied based on the dollar value of the contract.

Second, firms in labor surplus areas would have more opportunities to participate in subcontracts. Contractors must already submit a plan which demonstrates its best efforts to place subcontracts with small and small disadvantaged businesses. This legislation would add to the plan by having the contractor show that he can subcontract in designated areas of high unemployment, or labor surplus areas.

Third, the bill will increase competition in Government contracts, by requiring that more contracts and subcontracts be opened up for competitive bidding. Under this bill, small and small disadvantaged businesses would be given the maximum practicable opportunity to participate in the award of Federal procurements and subcontracts. This would maximize competition of component systems, spare parts and service for major weapons systems.

I do have some reservations about part of the bill—specifically that part pertaining to the purchase of technical data by the Government. At a minimum, the issue of trade secrets and other proprietary data must be addressed. I will continue to study this aspect of the bill as it progresses. Overall, however, I feel that this bill has many benefits to offer a wide assortment of groups.

I feel that this bill would benefit both small and small disadvantaged businesses and Government.

For small and small disadvantaged businesses it means the unfair disqualifiers will be removed, allowing them to gain access to their fair share of Government contracts and subcontracts. According to the National Federation of Independent Businesses, as many as 56,000 of NFIB's members would benefit directly from this bill. That's 10 percent of the membership of just one small business organization.

For the Government, and thus the taxpayer, this bill would mean a lower cost for the same quality job. It would mean more jobs in hard hit areas. Also, with more competition in the bidding process the Government would save money, thus reducing Federal spending and the deficit. Everyone would benefit from that.

I hope that my colleagues will join me in supporting this much needed legislation.●

Mr. SARBANES. Mr. President, I am pleased to join with the Senator from Illinois (Mr. DIXON) and a bipartisan group of Senators today in introducing the Small Business Competition in Contracting Act of 1983. The purpose of this legislation is to increase small business participation in the Federal procurement process, thereby increasing competition and reducing costs, while at the same time increasing the capabilities of our industrial base for defense and civilian procurements.

This is important and timely legislation. Studies have shown that savings of 50 percent can be realized through competitive procurement. Yet at this time, only 10 percent of goods and services purchased by the Department of Defense, for example, are obtained through competitive procurement. In the area of spare parts alone, it has been estimated that there are potential savings of $6 billion per year. Despite the official policy of the U.S. Government and the Department of Defense that small businesses have the maximum practicable opportunity to participate in the award of Federal contracts, the actual procurement practices of DOD frustrate competition and small business procurement.

This bill removes many of the barriers to competition and small business participation inherent in current procurement practices, and it would create the potential for large cost savings, improved delivery times, and superior quality of goods and services purchased by the Federal Government.

There have been a number of reports in recent years from the General Accounting Office, the DOD Inspector General, and others pointing out the undesirable results of the Defense Department's over-reliance on sole-source procurement and other noncompetitive practices. These reports have been amplified by press accounts documenting the exorbitant prices charged by defense contractors for common items and spare parts.

The Secretary of Defense has acknowledged that overpayment for spare parts is a serious problem. The Secretary has, in fact, announced that the Department will take action to hold contracting officers accountable for failing to stop overpayments. It is important to note, however, that under current procedures, it is often impossible for a contracting officer to identify or to develop alternate sources of supply for replacement parts. The original manufacturer or prime contractor is simply not required to provide enough information to identify acceptable substitute components or enough technical data to allow a small business to manufacture an equivalent part. Without an alternate source of supply, there is often no choice but to purchase from the original manufacturer.

In my view the sensible approach taken in this bill will increase competition and reduce defense expenditures without reducing defense procure-

ment. At the same time it will increase the capabilities of the industrial base of this country by maximizing the opportunity for participation by small businesses which are historically the most vital and innovative elements in our economy.

Mr. President, this legislation has received the enthusiastic endorsement of the National Small Business Association, the Small Business Legislative Council, Small Business United, and the National Federation of Independent Business. I congratulate the Senator from Illinois for his leadership on this issue, and I urge the appropriate committees to hold hearings on this legislation as soon as possible.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business, not to exceed 15 minutes, during which Senators may speak for 3 minutes each.

POWELL MOORE

Mr. BAKER. Mr. President, yesterday the distinguished minority leader and assistant majority leader discussed the imminent retirement from Government service of Assistant Secretary of State Powell Moore, and today, I want to join them in wishing Powell the best in the years to come. Powell is leaving the Department of State to become vice president for government affairs for the Lockheed Corp.

I can speak of Powell Moore with a measure of pride, for Powell began his service to the Government here in this Chamber with one of the Senate's most distinguished Members, Senator Richard B. Russell of Georgia. Since leaving the Senate on Senator Russell's death in 1971, Powell has served in the administrations of Presidents Nixon and Ford, at both the Department of Justice and the White House, with President Reagan at the White House, and now most recently with Secretary Shultz at the Department of State. In each of those positions, he has distinguished himself as an able professional of unquestioned integrity and unfailing good humor. Whatever his responsibilities have been, the American people have been abundantly well served by Powell Moore.

I am tempted to add as well, Mr. President, that we shall miss Powell's portly frame about the halls of the Senate. However, that may not be, and I hope it is not, entirely true.

I understand that the Lockheed Corp. does from time to time obtain the occasional Government contract. That being so, I would hope that Powell will still find occasion to visit and when he does, he will always be welcome.

Mr. President, Powell has been a dedicated public servant and he remains a good and valued friend. I am certain that all of my colleagues join in wishing Powell and his wife, Kathy, the very best of luck and good fortune in the coming year.

THE ATTORNEY GENERAL'S REMARKS CONCERNING CONGRESS

Mr. DECONCINI. Mr. President, I am very disturbed by reports in the press of statements Attorney General Smith made regarding the administration's relationship with Congress. If these reports are true, I believe that Mr. Smith owes each and every Member of Congress an apology.

Is is bad enough that the Attorney General chose in his analogy to compare Congress with what a great deal of evidence shows to be a corrupt and organized crime controlled labor union in which 34 leaders have been convicted of racketeering in recent years. It is even worse to attribute criminal activities to Members of Congress. As the chief law enforcement official in the United States, his remarks will be taken by members of the public to imply that he has knowledge of such criminal activities. American citizens will believe that his defensive rationalization of President Reagan's ill-conceived attendance at an International Longshoremen's Association convention reveals insight into Justice Department investigations of Members of Congress.

If the Attorney General has evidence concerning criminal activities by Members of Congress, he should take them to a grand jury. If he does not have such evidence, he must explain to the American public exactly what he meant and he should apologize to those he has tainted without reason.

SOUTH DAKOTA HOMECOMING

Mr. PRESSLER. Mr. President, South Dakota was the proudest State in the land on Saturday, July 23, when 75 natives who have distinguished themselves nationally and internationally in their chosen fields returned for the first South Dakota homecoming.

Probably the only statewide event of its kind ever held, the homecoming captured the attention of people in all parts of the State, particularly the 800 who attended the reception and dinner in Sioux Falls honoring the 75 former South Dakotans and benefiting the South Dakota Amateur Baseball Hall of Fame.

This museum is the only one of its kind in the world. The idea was brought to fruition through the support and financial assistance of Mrs. Helen Salo Mitchell of Lake Norden, S. Dak., and Minneapolis, Minn. Mrs. Mitchell received special recognition at the banquet.

Credit for the idea behind the South Dakota Homecoming and for the organization that carried the idea to a successful conclusion must go to Mr. Ray Antonen of Estelline, S. Dak., and to Mr. James Meaghan of Estelline, S. Dak., and Sarasota, Fla. Discussion has already begun on a possible second South Dakota Homecoming, with suggestions centering on the State's centennial year in 1989.

In addition to the 75 honored guests in attendance, 100 more former residents were invited to be a part of the evening's activities, but were unable to attend. All 175 honorees were listed in the banquet program with brief biographies.

In this welcoming remarks, Governor William Janklow noted the unique qualities of South Dakota. He stated:

> South Dakota is more than a name to its people—South Dakota is a way of life: a value system that all of you have taken with you wherever you have gone. It's a common horse sense that you can't acquire unless you've been born here and raised with it.

Among those honored for carrying forward the State's good name was Allen H. Neuharth, chairman and president of Gannett Co., Inc. Neuharth concluded the evening with a presentation on behalf of all South Dakota alumni by toasting those who have stayed in the State for their livelihoods and have "kept South Dakota what it is: the most all-American State in all of America."

In addition to Neuharth, some of the former South Dakotans honored at the homecoming were Myron Floren, accordionist with the Lawrence Welk Orchestra for over 25 years; Joe Foss, former Governor of South Dakota and first commissioner of the American Football League who was also keynote speaker for the homecoming banquet; Paul Friggens, recently retired after 31 years of editorial positions with the Reader's Digest; G. Keith Funston, former president of the New York Stock Exchange; Garney Henley, a 10-time All-Canadian football player with the Hamilton Tiger Cats; Dr. Arthur Larson, former Under Secretary of Labor and Director of the U.S. Information Agency; Jerome J. Lohr, president of the Turgeon and Lohr Winery in California; Felix Mansager, retired chairman and president of the Hoover Co.; Joe Robbie, managing partner of the Miami Dolphins; and V. J. Skutt, chairman and chief executive officer of the Mutual of Omaha Insurance Co.

Among those listed on the program for the South Dakota homecoming but who were unable to attend were Senator J. JAMES EXON; former U.S. Senators James G. Abourezk and George S. McGovern; actresses Catherine Bach and Cheryl Ladd; television personal-

ities Bob Barker, Tom Brokaw, and Lawrence Welk; Sparky Anderson, manager of the Detroit Tigers and former manager of the world champion Cincinnati Reds; and Hon. Sylvia Bacon, judge of the Superior Court of the District of Columbia.

"The Challenge State" is one of South Dakota's nicknames. Originally this referred to our extreme climate and wide variety of scenery—Black Hills, prairies, glacial lakes, Badlands. The phrase could also be applied to the people of South Dakota, who obviously thrive on challenge, judging from the number who become outstanding achievers.

THE ENTITLEMENT OF THE REPUBLIC OF CHINA TO RETAIN ITS MEMBERSHIP IN THE ASIAN DEVELOPMENT BANK

Mr. DECONCINI. Mr. President, in 1979 when the Taiwan Relations Act was before the Senate, Senator Frank Church of Idaho, then the chairman of the Senate Foreign Relations Committee, together with Senator Jacob Javits of New York, then the ranking Republican of the committee, sponsored a series of amendments to the bill designed to better protect the legitimate interests of the people of Taiwan. Senate approval of these amendments helped to forge a consensus that led to an overwhelming vote of 85 to 4 on final passage.

Senator Church, who is now engaged in the practice of international law in the firm of Whitman & Ransom, has recently written a legal treatise on "The Entitlement of the Republic of China To Retain Its Membership in the Asian Development Bank."

The treatise makes a persuasive case that the Republic of China continues to be qualified, on both legal and equitable grounds, to remain a full member in the Asian Development Bank, regardless of whether or not the People's Republic of China becomes a member of that institution. Inasmuch as the treatise speaks to the provisions of Senate Resolution 137, which I have cosponsored with more than 50 of my Senate colleagues, expressing the sense of the Senate that the Republic of China should retain its full membership in the Asian Development Bank, I ask unanimous consent that the full text of the treatise, including the footnotes, be printed in the RECORD.

There being no objection, the treatise was ordered to be printed in the RECORD, as follows:

THE ENTITLEMENT OF THE REPUBLIC OF CHINA TO RETAIN ITS MEMBERSHIP IN THE ASIAN DEVELOPMENT BANK

On February 10, 1983, in an unsigned letter addressed to Mr. Masao Fujioka, President of the Asian Development Bank (ADB or the Bank), Wu Xueqian, Minister of Foreign Affairs of the People's Republic of China (PRC), gave notice of his government's intention to apply for membership in the Bank. The letter made clear, however, that the PRC's membership application would be contingent upon the expulsion of the Rebublic of China (ROC). Accordingly, the PRC requested the ADB "to take immediately the necessary measures to terminate the membership of the Taiwan authorities." [1]

The object of this paper is not to contest the eligibility of the PRC to become a member of the ADB. It is, rather, to demonstrate that any decision by the Bank to expel the ROC or to preclude its full membership in the Bank would be unjust, lacking in legal basis, arbitrarily political in character, violative of the Bank's charter,[2] and contrary to the institution's intended function and purpose.

The PRC bases its demand for the expulsion of the "Taiwan authorities" on two premises: (1) that the ROC is unqualified for membership in the ADB, since it is neither a member or associate member of the United Nations Economic and Social Commission for Asia and the Far East, nor a member of the United Nations or any of its specialized agencies, as stipulated in Article 3.1 of the Agreement; and (2) that only the PRC is entitled to represent China in any international organization.[3] These two premises must be scrutinized in the context of the ADB Agreement, the history and circumstances of the ROC's admission to membership in the Bank, and the ROC's fulfillment of its obligations as a member.

THE ROLE OF THE ADB

The Agreement establishing the ADB was signed in Manila on December 4, 1965.[4] It entered into force on August 22, 1966, after being ratified by fifteen signatory governments.[5] The Republic of China (ROC) deposited its instrument of ratification on September 22, 1966, thus becoming one of the founding members.[6] From the day of the Bank's birth, the ROC has been—and still remains—a member in good standing. Today the Bank has grown to include 45 member nations. It is owned by the governments of 31 countries from the Asia-Pacific region, and 14 countries from Europe and North America.[7]

The ADB was established for the purpose of promoting economic development in the Asia-Pacific region where it has become an important source for generating capital investment. According to a description contained in the Bank's 1982 annual report, the ADB's "principal functions are (i) to make loans for the economic and social advancement of developing member countries; (ii) to provide technical assistance for the preparation and execution of development projects and programs and advisory services; (iii) to promote investment of public and private capital for development purposes; and (iv) to respond to requests for assistance in coordinating development policies and plans of member countries. In its operations, the Bank is also required to give special attention to the needs of the smaller or less developed countries and to give priority to regional, subregional and national projects and programs which will contribute to the harmonious economic growth of the region as a whole." [8]

MEMBERSHIP IN THE ADB

Membership in the ADB is governed by Article 3 of the Agreement. Article 3.1 states:

"Membership in the Bank shall be open to: (i) members and associate members of the United Nations Economic Commission for Asia and the Far East; and (ii) other regional countries and non-regional developed countries which are members of the United Nations or of any of its specialized agencies." [9]

In 1966, the ROC, as a member of the United Nations Economic Commission for Asia and the Far East (ECAFE), which is now known as the Economic and Social Commission for Asia and the Pacific (ESCAP),[10] fully met the requirements for admission to membership in the ADB, as set forth above. However, in 1971, the United Nations General Assembly adopted a resolution in which the ROC was replaced by the PRC in the U.N. and its specialized agencies.[11] In the case of the International Monetary Fund and the World Bank, the ROC's representation was replaced by the PRC in 1980.[12]

Thus the question arises under Article 3 of the Agreement whether, once a member is admitted to the ADB, it may continue as a member in the event that it subsequently loses its membership in the United Nations or its specialized agencies. The answer to this question depends upon the interpretation given Article 3.1 of the Agreement by the Bank's Board of Governors.[13]

Article 60 of the Agreement governs the interpretation of its provisions. Although preliminary questions of interpretation may be submitted to the Board of Directors, Article 60.2 states that ". . . any member may require that the question be referred to the Board of Governors whose decision shall be final." [14] Moreover, if the interpretation bears upon the suspension of a member, Article 42 of the Agreement vests the sole power in the Board of Governors, while Article 28 provides that this power cannot be delegated.[15]

The procedures to be followed in suspending a member are spelled out in Section 17 of the By-Laws:

"Before any member is suspended from membership in the Bank, the matter shall be considered by the Board of Directors, which shall inform the member sufficiently in advance of the complaint against it, and shall give the member a reasonable time to explain its case orally and in writing. The Board of Directors shall recommend to the Board of Governors whatever action it considers appropriate. The member shall be notified of the recommendation and of the date on which the matter is to be considered by the Board of Governors, and it shall be given a reasonable time in which to present its case orally and in writing before the Board of Governors. Any member may waive this right." [16]

Because Section 17 of the Bylaws regarding suspension procedures is subordinate to Article 42 of the Agreement,[17] any suspension of a member leading to cessation of membership may occur only "If a member fails to fulfill any of its obligation(s) to the Bank . . ." [18]

When examined in the context of the entire Agreement, the membership qualifications prescribed in Article 3.1 should be given no broader interpretation than the words themselves convey.[19] The U.N. affiliations required clearly relate to eligibility for admission to membership in the ADB, and should not be interpreted as applicable to a member once properly admitted.[20] At the time of its admission, the ROC was a member of the U.N. and its specialized agencies, including ECAFE. It fully met the qualifications for admission to membership in the Bank. Thus, the real question presented is: How may a membership, properly

granted at the time of admission to the ADB, be terminated afterwards? The answer to this question must rest upon an examination of the Agreement in its entirety.

The Agreement stipulates only two ways for a membership to be terminated—either by voluntary withdrawal or by suspension.[21] Significantly, the loss of membership in the U.N. or its specialized agencies is mentioned nowhere in the Agreement as a condition for the termination of membership in the ADB. This omission cannot be dismissed as inadvertent, since the Bank's Agreement was closely patterned after the Charter of the International Bank for Reconstruction and Development (IBRD), drafted 22 years before the founding of the ADB.[22]

Whereas the IBRD Charter specifies that membership shall be open to "members of the International Monetary Fund" (IMF), it expressly sets forth three grounds for termination of IBRD membership—withdrawal, suspension and cessation of membership in the IMF.[23] In contrast, the ADB Agreement, by mentioning only withdrawal and suspension as the basis for terminating membership, deliberately omits the loss of membership in the U.N. or its specialized agencies as a condition for terminating membership in the ADB.

Similarly, the Charters of the International Development Association (IDA) and the International Finance Corporation (IFC), two agencies closely associated with the IBRD, stipulate that loss of membership in the IBRD shall automatically result in the termination of membership in the IDA and the IFC.[24] Except for its regional character, the ADB's goals are very similar to those of the IBRD and its affiliates. For this reason, since the ADB was established much later, the Charters of these earlier financial institutions were scrutinized by the founders of the Bank. Nevertheless, the ADB Agreement provides only two grounds for cessation of membership, voluntary withdrawal or suspension by reason of a member's failure to fulfill its obligations. No mention is made of the need for continued membership in the U.N. or its specialized agencies, nor should any be implied. Had the founders so intended, they would have written such a provision into the Agreement, in accordance with the precedent established in the charters of the IBRD and its affiliates.

It is clear, then, that once admitted in compliance with Article 3, membership in the ADB continues indefinitely unless a member withdraws or is suspended by the Bank. But any suspension, including one leading to eventual cessation of membership, is controlled, not by Article 3, but by other provisions of the Agreement and the By-Laws.

Inasmuch as the ROC does not intend to withdraw from the ADB, the pertinent provision governing suspension of its membership is contained in Article 42 of the Agreement which reads:

"1. If a member fails to fulfill any of its obligation(s) to the Bank, the Board of Governors may suspend such member by a vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members.

"2. The member so suspended shall automatically cease to be a member of the Bank one (1) year from the date of its suspension unless the Board of Governors, during the one-year period, decides by the same majority necessary for suspension to restore the member to good standing.

"3. While under suspension, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all its obligations." [25]

Article 42, by its terms, limits the suspension of membership to a single prerequisite: the failure of a member "to fulfil any of its obligation(s) to the Bank." [26]

Since its accession to membership in the ADB, the ROC has faithfully fulfilled all of its obligations to the Bank, as evidenced by its regular stock subscriptions, including: [27]

(A) Ordinary Capital Subscriptions

(1) Original capital subscription when the Bank was established in December 1966.

Total amount: US $16,000,000 of which 50 percent callable, 50 percent paid in.

For the paid in portion, 50 percent in convertible currency, 50 percent in national currency.

(2) First General Capital Increase (GCI-I). Of the 150 percent increase: 80 percent callable, 20 percent paid-in. For the paid-in portion, 40 percent in convertible currency, 60 percent in national currency.

(3) Second General Capital Increase (GCI-II). Of the 125 percent increase: 90 percent callable, 10 percent paid-in. For the paid-in portion, 40 percent in convertible currency, 60 percent in national currency.

(4) Third General Capital Increase (GCI-III). Of the 105 percent increase: 95 percent callable, 5 percent paid-in. For the paid-in portion, 40 percent in convertible currency, 60 percent in national currency.

On the basis of the above, ROC's total amount of capital subscription as of today is about US$190 million, of which about US$9 million has been paid-in in convertible currency, and about NT$457 million in national currency. For the GCI-III, the ROC will have to pay in the next four years 40 percent of the paid-in portion in convertible currency.

(B) Technical Assistance Special Fund (TASF)

About seven years ago, the ROC contributed US$200,000 to the Technical Assistance Special Fund, with payments spread over a period of several years. This money has been used by ADB for hiring consultants from ROC and other ADB member countries.

(C) Asian Development Fund (ADF)

The ADB mobilized a total of US$3.2 billion for ADF-III on July 1982, including contributions, made for the first time, from four developing member countries; namely, Korea, Indonesia, the ROC and Hong Kong. The ROC's contribution was US$2 million, which will be paid in four equal annual instalments of US$500,000 each, from 1983 to 1986.

It is readily apparent that the ROC has not only "fulfilled its obligations to the Bank," in the form of ordinary capital subscriptions, but it has freely contributed money to the Bank's voluntary programs. Moreover, in continuing to accept contributions from the ROC, the Bank has never questioned the ROC's eligibility to make them. Both the request from the ADB management for the ROC to participate in the third general capital increase (GCI-III), and its acceptance of the ROC's capital subscription to the same, occurred after the ROC had lost its membership in the U.N., its specialized agencies, the IMF and the IBRD. Moreover, the ROC's pledge to the Asian Development Fund (ADF) was accepted by the ADB in early 1982, once more long after the ROC had lost its membership in the U.N. and its specialized agencies, and some two years after its loss of membership in the IMF and the IBRD.[28]

Therefore it is clear that the ROC's loss of U.N. affiliation, as well as its loss of membership in the IMF and the IBRD, has never before given rise to any questioning of its membership in the ADB, as the Bank, for years afterwards, has continued to request and accept the ROC's financial contributions. This simply underscores the fact that the ADB is a regional development bank, both independent of, and uncontrolled by, any action taken by the IMF, the IBRD, the U.N. or its specialized agencies.

That the ROC has always been, and still remains, an ADB member in good standing, is attested to by the Bank's own President, Masao Fujioka, who recently stated:

"On this issue, I can tell you that Taiwan (the Republic of China) was one of the founding members of the Bank some 16 years ago, and has been a good member. It has performed all its obligations under the Charter and has cooperated with the Bank in terms of contributions and otherwise." [29]

The United States representative on the ADB Board of Directors, John A. Bohn, Jr., underscored this point in observing that the ROC has been a "loyal member" of the Bank since its founding.[30]

It necessarily follows that explusion of the ROC from the ADB cannot be based upon its failure to fulfill its obligations to the Bank, the only grounds stipulated in the Agreement for a suspension leading to cessation of membership. Arguably, such a decision would have to be taken on the basis of the PRC's second premise, namely, that "the Taiwan authorities participation, in the name of China, in all international organizations," is somehow "illegal and invalid." [31]

The China Representation Issue

In effect, the PRC contends that it occupies the position of a "successor government," with the right to displace the ROC in any international organization in which it holds membership. Such a proposition is unsupported by any recognized principle of international law. Indeed, the contrary holds true. Membership by right of succession is not automatic. Even if, for the sake of argument, the PRC were presumed to be a "successor government," the ROC's membership in such organizations "cannot pass to a successor State; [32] (membership) can be acquired only in accordance with the rules laid down in their constitutions. [33] This implies that unless the devolution of membership is expressly provided for in the constituent instrument of the organization concerned, no succession to membership can take place." [34] The ADB Agreement makes no reference whatever to membership by succession.

In order to put this matter in perspective, it is necessary to review the historical circumstances surrounding the entry of a state called "China" into the U.N., the IMF and the IBRD, which occurred shortly after World War II. At that time, the "China" so admitted occupied most of the Chinese mainland and the island territories. In December 1946, this "China" adopted a constitution whereby the Republic of China (ROC) was formally established and a new government formed. [36]

Meanwhile, however, civil war raged on the Chinese mainland and the fighting eventually forced the ROC government, in 1949, to withdraw to Taiwan. Since then, the ROC government has remained in effec-

tive control of Taiwan, the Pescadores and certain other islands, while the government of the Peoples Republic of China (PRC) has controlled the mainland.

This change of circumstances eventually led to the PRC's displacement of the ROC as the representative of "China" in the U.N., the IMF, the IBRD, and other U.N. agencies. When a choice had to be made as to which government should occupy the "China" seat in these institutions, preference was given to the government which then controlled the mainland.

But the circumstances surrounding the ROC's admission to membership in the ADB were quite different. By 1966, although the ROC was still affiliated with the U.N. and its specialized agencies, it no longer maintained a presence on the Chinese mainland. The membership which the ROC acquired in the ADB actually related to the area of Taiwan, not the whole area of China. The amount of the ROC's subscription to the Bank's capital was determined solely on the basis of the area, population and economy of Taiwan.[37]

Thus, the ADB, unlike the U.N., the IMF or the IBRD, is not called upon to decide whether the ROC or the PRC should occupy the "China" seat at the Bank. Actually, no such seat exists, a fact borne out in the documents prepared at the time of the Bank's establishment, in which the term "China" is used in some cases, the term "China (Taiwan)" in other cases, and the term "Republic of China" in still other cases.[38] The truth is that the ADB accepted the ROC into the Bank's membership, not on the basis of its claim to represent the whole area of China, but rather on the basis of the territory, population and economy over which it then exercised "effective control," i.e. the islands of Taiwan and the Pescadores.

The "effective control" test is evidenced by the formula for determining the amount of capital stock in the ADB to be subscribed by the ROC. The By-Laws of the ADB state:

"When submitting an application to the Board of Governors, the Board of Directors, after consultation with the applicant country, shall recommend to the Board of Governors the number of shares of capital stock to be subscribed." [39]

The ROC's initial subscription to the authorized capital stock of the ADB was $16 million. Its contribution to the funding of the Bank, and its portion of authorized shareholdings, give the ROC a modest 1.5 percent of the total voting power of the Bank's membership.[40] This, in itself, demonstrates that the ADB admitted the ROC as a member, strictly on the basis of the island territories over which it then exercised "effective control." The computations excluded the Chinese mainland.

The very opposite held true when the ROC occupied the "China" seat in the IBRD. In that case, the ROC's capital contributions to the World Bank were based upon an economic formula which covered the whole of China, both the mainland and the island territories. Accordingly, in 1978, for example, the ROC had 2.59 percent of the capital stock in the IBRD, a proportionately larger share of a bank much bigger than the ADB.[41]

So if the PRC's application for membership in the ADB is given treatment equivalent to that accorded the ROC, its capital subscription, and its portion of authorized shareholdings, will be based on a formula limited to the Chinese mainland, that is, to the area, population and economy over which the PRC presently exercises "effective control."

The PRC, however, is asking, not for equivalent treatment, based on the same "effective control" standard, but for a preferred status based on polemics blatantly political in character. Thus, in its letter of intent to join the Bank, the PRC asserts that it is the "sole legal Government of China;" that "Taiwan is an inalienable part" of China; that the PRC alone "represents China in any international organization;" and that the ROC's participation, "in the name of China, in all international organizations (is) illegal and invalid." [42]

Political considerations are improper under the agreement

The political nature of the PRC's declared intent to join the Bank was acknowledged by ADB President Fujioka, at his press conference in Manila on April 11, 1983:

"But there is one more political issue, and that is China." [43]

Article 36 of the Agreement specifically prohibits the "Bank, its President, Vice President(s), officers and staff, from allowing their decisions to be influenced by the political character of the member concerned. "Only economic considerations shall be relevant to their decisions . . . in order to achieve and carry out the purpose and functions to the Bank." [44]

So the central question can be put very simply: what is the ADB? It is a regional bank. Article 1 of the Agreement describes the purpose of the Bank as that of fostering "economic growth and cooperation in the region of Asia and the Far East" and that of contributing to "the acceleration of the process of economic development of the developing member countries of the region, collectively and individually."[44]

The ROC is ideally suited to help advance the ADB's objectives, for the following reasons:

(1) The ROC has the eleventh largest population among all 31 regional members;

(2) The ROC has the sixth largest per capita GNP (after Japan, Australia, New Zealand, Singapore and Hong Kong) of all 31 regional members;

(3) The ROC ranks sixth in foreign trade (after Japan, Singapore, Australia, South Korea, and Hong Kong) among all 31 regional members; in 1982, the value of imports and exports amount to US $41.1 billion, with US $18.9 billion of imports and US $22.2 billion of exports.

(4) The ROC has diplomatic relations with 23 countries, maintains over 100 trade offices throughout the world, and trades with over 140 countries, including all the major countries that are members of the ADB.[45]

If the ROC were expelled from the ADB for political reasons, the Bank would be deprived of its access to the resources of one of the region's richest countries. In 1971, the ROC ceased to compete for the limited capital of the ADB as a borrower and became a donor instead, by contributing to the Bank's Technical Assistance Special Fund (TASF) and to its Asian Development Fund (ADF).[46]

This makes it all the more apparent that the expulsion of the ROC from the ADB would be harmful to the Bank, contrary to its purpose and functions, and violative of the injunction contained in Article 14 (xiv) of the Agreement which stipulates that "The Bank shall be guided by sound banking principles in its operations." [47] Furthermore, such a decision would deprive the people of Taiwan and the Pescadores of representation in the region's largest economic development organization, despite the major contribution they make to the region's wealth and productivity.

PRC's demand is unprecedented

Since its establishment in 1966, membership in the ADB has increased from 31 to 45 states. None of the 14 new members attached any precondition to its application for membership.[48] To accede to the PRC's demand for the explusion of the ROC as a pre-condition for its membership application would be unprecedented. It would grant a special concession to the PRC which has been made to no other government, and thus confer upon it favored treatment. Yet the Bank, its officers and staff are instructed under Article 36 of the Agreement to show no partiality in their dealings with members.[49]

United States position

At the present time, the United States Government, according to Secretary of State George P. Shultz, while favoring the admission of the PRC to the ADB, opposes the expulsion of the ROC. "If Taiwan is expelled, that would cause great difficulty for the Bank as regards to support from the United States."[50]

This view was confirmed by Secretary of Treasury Donald Regan during his press conferences on May 4 and 5, 1983 in Manila:

"As far as the United States is concerned, we would deal with an application for the Peoples Republic if it is brought to the Bank as an ordinary . . . application to join the Bank—no conditions.

". . . at this point, we recognize that Taiwan is a member of the Bank, has a right to stay a member of the Bank . . .

". . . The status quo is satisfactory to us at this moment.

". . . The United States position is that Taiwan is a member of the Bank and should remain a member of the Bank."[51]

In addition to these statements, reflecting the views of the Reagan Administration, a number of actions have been taken in the Congress underscoring the concern of members regarding any decision by the ADB to expel the ROC.

In 1979, Congress adopted statutory language in the Taiwan Relations Act which states:

"Nothing in this Act may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution or any other international organization." [52]

Recently, a Concurrent Resolution has been introduced in the House of Representatives expressing the sense of Congress that the support provided by the United States to the ADB should be terminated if the ROC is denied full membership.[53] A second resolution has been introduced in the Senate, with more than 50 co-sponsors, expressing the sense of the Senate that the ROC should retain full membership in the ADB and that it should not be expelled as a pre-condition for membership in that body by the PRC.

The operative portion of the resolution reads:

"*Resolved*, That it is the sense of the Senate that—

(1) Taiwan, Republic of China, should remain a full member of the Asian Development Bank, and that its status within that body should remain unaltered no matter how the issue of the People's Republic of

China's application for membership is disposed of; and

(2) The President and the Secretary of State should express support for Taiwan, making it clear that the United States will not countenance attempts to expel Taiwan, Republic of China, from the Asian Development Bank." [54]

In addition, the House Foreign Operations Appropriations Subcommittee, which has jurisdiction over funding for the ADB, adopted a statement for its report warning that the United States would pull out of the ADB if the ROC were expelled.[55]

Although these legislative actions, which would express the sense of Congress, are not legally binding upon the Administration, they reflect Congressional concerns and could indicate the level and extent of United States participation in the ADB which Congress might authorize in the future. The United States has contributed $1.4 billion since the Bank's founding in 1966, of which $274 million has been paid to the Bank, with the balance in callable capital. In addition, the United States has paid $774 million in cash to the Asian Development Fund. The American contributions to both the ADB and the ADF amount to 16.3 per cent of the capital of the Bank.[56]

Conclusion

It will be remembered that the PRC has based its demand for the expulsion of the "Taiwan authorities" on two premises: (1) that the ROC is no longer qualified for membership in the ADB under Article 3.1 of the Agreement, since it has lost its membership in the U.N. and its affiliates; and (2) that only the PRC is entitled to represent "China" in any international organization. For the reasons set forth above, neither of these premises is valid.

As for the first premise, the U.N. affiliations prescribed by Article 3.1 of the Agreement clearly relate to eligibility for admission to membership in the ADB, and should not be interpreted as applicable to a member once admitted.

As for the second premise, the de facto basis for the ROC's membership in the ADB relates to Taiwan, not the whole of China. The amount of the ROC's subscription to the Bank's capital was determined solely on the basis of the area, population and economy of Taiwan, over which the ROC exercised effective control, a condition which remains unchanged from then until now.

In addition to the inadequacy of the PRC's case for expelling the ROC from the Bank, such a decision would be damaging to the Bank's reputation for fairness. It would be unjust to expel the ROC, when all interested parties admit—even the PRC does not deny—that the ROC has faithfully fulfilled all its obligations to the Bank. Moreover, the Bank's own interests would be adversely affected. Such a verdict would cut off the Bank's access to the resources of one of the region's richest countries, substituting a borrower for a donor.

Finally, a decision to accede to the PRC's demand for the expulsion of the ROC as a pre-condition for its own admission to membership would give it favored treatment conferred upon no other member, contrary to the requirement that members of the Bank be treated impartially.

Therefore, whether or not the PRC becomes a member, the ROC is entitled, on both legal and equitable grounds, to retain its full membership in the Asian Development Bank.

FOOTNOTES

[1] Letter unsigned but bearing the name of Wu Xueqian, Minister of Foreign Affairs of the People's Republic of China, to Masao Fujioka, President of the Asian Development Bank (February 10, 1983).

[2] Agreement Establishing the Asian Development Bank, hereinafter referred to as the "Agreement," adopted in Manila on December 4, 1965, at the Conference of Plenipotentiaries convened by the Economic Commission for Asia and the Far East, 17 UST 1418, (1966).

[3] Letter from Wu Xueqian, supra, note 1.

[4] Agreement, supra, note 2.

[5] United States Government Manual, at 720 (1979-1980).

[6] IV Basic Documents of Asian Regional Organizations, at 1130 (M. Haas, ed. 1974).

[7] Asian Development Bank Annual Report 1982, inside cover.

[8] Id.

[9] Agreement, supra, note 2, at 3.

[10] United Nations Handbook, at 158 (1982).

[11] United Nations General Assembly Resolution on China, (October 25, 1971).

[12] International Monetary Fund Resolution on China (April 17, 1980); International Bank for Reconstruction and Development Resolution on China, (May 15, 1980).

[13] As stated in Article 31 of the Vienna Convention on the Law of Treaties, the general rule of interpretation is that "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context in light of its object and purpose." Supplement to International Organizations in Their Legal Setting, at 54 (F. Kirgis, ed, 1981).

[14] Agreement, supra, note 2, at 38.

[15] Id. at 22 and 30.

[16] By-Laws of the Asian Development Bank, hereinafter referred to as the "By-Laws," adopted in Tokyo on November 24, 1966, at the Inaugural Meeting of the Board of Governors of the Asian Development Bank, at 7 (1966).

[17] Id. at 1.

[18] Agreement, supra, note 2, at 30.

[19] Supplement, supra, note 13.

[20] Agreement, supra, note 2, at 3.

[21] Id. at 29.

[22] Articles of Agreement of the International Bank for Reconstruction and Development, formulated at the United Nations Monetary and Financial Conference at Bretton Woods, New Hampshire, July 1-22, 1944; entered into force December 27, 1945; 3 Treaties and Other International Agreements of the United States of America 1776-1949, at 1390 (C. Bevans, comp. 1969).

[23] Id. at 1406.

[24] Articles of Agreement of the International Development Association, 11 UST 2284, (January 26, 1960); Articles of Agreement of the International Finance Corporation, 7 UST 2197, (May 25, 1955).

[25] Agreement supra, note 2, at 30.

[26] *Id.*

[27] Letter from Sam C. Hsieh, Vice Chairman, Council for Economic Planning and Development, Executive Yuan, Republic of China (June 3, 1983).

[28] The doctrine of ratification is a long established concept in the law giving effect by approval or treating as good or authorized an act which might be disavowed. 18 Am. Jur. 2nd Conv. § 73.

[29] Press Conferences by Masao Fujioka, (February 18, 1983).

[30] The Economist, at 84 (February 26, 1983).

[31] Letter, supra, note 1.

[32] See Vallat, "Some Aspects of the Law of State Succession," 41 Trans. Grotius Society at 134 (1956); Jenks, "State Succession in Respect of Law-Making Treaties," 29 *B.Y.I.L.* at 133 (1952); Green, "Malaya/Singapore/Malaysia: Comments on State Competence, Succession and Continuity," 4 Canadian Yearbook of International Law at 32, 41-42 (1966).

[33] See Mankiewicz, 29 Journal of Air Law and Commerce, at 53 (1963); Aufricht, 11 International Constitutional Law Quarterly, at 167 (1962).

[34] O. Udokang, Succession of New States to International Treaties, at 276 (1972).

[35] However in considering the question of substituting the Socialist Republic of Vietnam for the Republic of South Vietnam as a member of the ADB in 1976, the report of the Bank's Board of Directors stated:

"The Bank has not previously been called upon to consider the consequences for its membership when a member state loses its separate identity and the successor state claims to continue the membership rights and obligations of its predecessor. The general principles of international law relating to state succession leave the question of succession to membership of international organizations as a matter to be determined primarily by reference to the constituent charter of each organization. Whether or not SRVN's claim may be accepted is, therefore, a matter for construction of the relevant provisions of the Articles of Agreement. To the extent that the Articles do not provide clear guidance, weight may properly be given to the decisions of other comparable organizations in similar circumstances, and to practical considerations." See Doc. R93-76 (September 3, 1976).

[36] Constitution of the Republic of China.

[37] Asian Development Bank Report of the Working Group of Experts, Annex E, (October 1964); Working Paper No. 8 of the Consultative Committee (June 1965); Report of Consultations with the Republic of China Government, (August 1965); Final Report of the Consultative Committee, (August 1965); Working Paper of the Preparatory Committee on Establishment of the Asian Development Bank, (October 1965).

[38] See for example the Report of the Conference of Plenipotentiaries on the Asian Development Bank; the Consultative Committee's Report of Consultations with the Republic of China Government (August 1965); Annex A of the Agreement.

[39] By-Laws, supra, Note 15, at 6.

[40] Far Eastern Economic Review, 119 at 83, (March 3, 1983).

[41] 1978 Annual Report of the International Bank for Reconstruction and Development.

[42] Letter, supra, note 1.

[43] Press conference by Masao Fujioka, Manila, (April 11, 1983).

[44] Agreement, supra, note 2, at 2.

[45] Letter, note 27.

[46] Id.

[47] Agreement, supra, note 2, at 12.

[48] Letter from Yu Kuo-Hwa, Governor of the Central Bank of China, to Masao Fujioka, President of the Asian Development Bank. (February 26, 1983).

[49] Agreement, supra, note 2, at 27.

[50] Los Angeles Times, March 5, 1983, Part 1 at 20.

[51] Press conferences by Secretary of the Treasury Donald Regan, Manila (May 4 and 5, 1983).

[52] "Taiwan Relations Act," II Legislation on Foreign Relations Through 1979, Senate Committee on Foreign Relations, at 559; 22 U.S.C. 3301-3316.

[53] H. Con. Res. 120, 98th Congress, First Session, 129 Congressional Record, at H 2510 (1983).

[54] S. Res. 137, 98th Congress, First Session, 129 Congressional Record, at S 6406 (1983).

[55] 41 Congressional Quarterly 118, at 888 (May 7, 1983).

[56] New York Times, March 22, 1983, at D 14.

THE SALE OF GRAIN TO THE U.S.S.R.

Mr. DECONCINI. Mr. President, I oppose the recently concluded grain pact with the Soviet Union under which the Soviets have agreed to purchase at least 9 million metric tons of American grain for each of the next 5 years. While this action may reduce our agricultural surpluses and prop up sagging commodity prices and farm income, it is clearly contrary to the foreign policy objectives of the United States and sends the wrong signal to the Soviet leadership.

When President Carter imposed a grain embargo against the Soviet Union in 1980 in retaliation for the Russian invasion of Afghanistan, I supported that action. However, I felt it was unfair to ask the American farmer to share this burden alone and believed that trade sanctions should have been imposed against all U.S. exports to the Soviet Union. If the actions of the Soviet Union pose a threat

to our security interests, then we have an obligation to retaliate with sanctions which will have a direct impact on their economy and, hopefully, on their expansionist resolve. Intelligence reports indicate that the Soviet economy is in deep trouble. For our Government to sign an agreement which will improve conditions in the Soviet society makes no political sense. There are those who oppose the use of food as a foreign policy instrument. But the use of food as a weapon is clearly preferable to the use of conventional and nuclear arms and the specter of committing American troops to battle to deter Soviet aggression.

The Soviets have not modified their behavior since 1980. They are still Afghanistan, they are still meddling in Angola, they are fomenting and bank rolling revolution in Central America, and they continue to blatantly disregard the human rights of their citizens.

Mr. President, we simply cannot have it both ways. We cannot use tough rhetoric against the Soviet Union on the one hand, and feed its people and its armies with the other. We cannot dramatically increase our defense expenditures to respond to the Soviet threat and at the same time provide it with cheap food. We cannot expect our allies to drastically curtail their trade with the Soviet Union when we refuse to do so ourselves. Either we are serious about the Soviet threat or we are not. Either we remain consistent in our foreign policy objectives or we become the laughingstock of the world. Our rhetoric rings hollow if we are not willing to follow tough words with tough actions. This latest agreement with the Soviet Union is but one more example of a foreign policy gone awry. It is inconsistent; it is contrary to our security interests; it encourages the Soviet Union to continue its reprehensible behavior both at home and abroad and I cannot, in good conscience, support it.

WASTE-TO-ENERGY EXCEPTION TO SALE-LEASEBACK LEGISLATION

Mr. DURENBERGER. Mr. President, we have all heard a lot recently about what seems to be this year's favorite tax loophole—the sale and leaseback of property by tax-exempt entities. Although I am a cosponsor of S. 1564, Senator DOLE's bill to eliminate these abusive sale-leaseback arrangements, I believe the bill needs improvement in several areas. Two of these are solid waste disposal projects that produce energy—waste-to-energy (WTE) projects as they are called in the industry—and district heating and cooling projects. I wanted to let my colleagues know today that I will be offering amendments during Finance Committee markup of S. 1564 to exclude them from the legislation.

During the hearings last month in the Finance Committee, Senator DOLE indicated that WTE projects would be protected because the private developers are at risk. I am pleased by my colleague's statement, but I am concerned because the legislation has a number of tests. These projects could get tied up for years as we wait for Treasury regulations, and then, after the regulations are issued, the developers wait while interpretations are being made.

The private sector has traditionally been involved in developing WTE projects in the last 10 years. Typically the private sector has taken significant risks in their service contracts with local governments. These contracts result from hard bargaining that insures protection of the public interest. In order to assure that project development can continue, it is essential that we do not further complicate these projects by vague statutory language that would have the net effect of undermining a community's efforts to develop projects.

The far preferable route, I believe, is simply to exempt WTE projects entirely. This is what we did last year during TEFRA in exempting solid waste disposal units from the ACRS restrictions put on industrial development bonds.

The rationale then is the same as now: Without these tax incentives these projects will not be economically viable. Municipal governments will continue to be faced with only one alternative to solid waste disposal—landfill.

Landfills are not the answer. As we who are sensitive to political issues know, landfills can be hot potatoes. They may be an acceptable solution as long as they are in someone else's backyard. But it is becoming increasingly difficult to find that backyard.

Existing landfills that are environmentally unsafe are generally not shut down until alternative forms of disposal are available. As a result, it is important not to jeopardize or confuse WTE development at a time that many communities face solid waste disposal crises.

My amendment before the Finance Committee will also address district heating and cooling. District heating is the major form of thermal energy delivery in core city areas. Delivery systems for electricity and natural gas are not penalized for sales to tax-exempt organizations. Likewise, we should not penalize the delivery of energy in the form of steam or hot water sold to governmental entities and tax-exempt organizations. Such purchases of energy are not the public use of the district heating pipes just as the purchase of electricity is not the public use of the distribution wires.

District heating is an energy delivery highway that serves as the distribution system for energy-efficient projects such as waste to energy, cogeneration, and recovery of industrial waste heat. Private developers of district heating systems are at risk even though sales may be made to tax-exempt entities. Uncertainty in the interpretation of several provisions of the Tax Code has presented problems for capital formation for district heating projects. This amendment clarifies and codifies that the sale of energy to a tax-exempt entity by a district heating or cooling system does not constitute use of that delivery system.

Only last year were district heating and cooling included in section 103 under my amendment to TEFRA. We should give district heating a chance to grow in the United States. Now is not the time to put district heating in jeopardy.

SENATOR BAUCUS SPEAKS TO AMERICAN HOSPITAL ASSOCIATION

Mr. LONG. Mr. President, recently, my colleague from Montana, Senator BAUCUS, addressed the American Hospital Association convention in Houston.

Senator BAUCUS is the ranking Democrat on the Finance Committee's Health Subcommittee and is widely respected for his leadership in solving the problems facing rural hospitals.

His speech discusses the major health issues before the Senate and I urge my colleagues to read it. His comments are always thought provoking.

I ask unanimous consent that Senator BAUCUS' speech appear following my remarks.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR MAX BAUCUS TO AMERICAN HOSPITAL ASSOCIATION

INTRODUCTION

Thank you very much for inviting me to be with you today. I'm particularly interested in the special problems facing small rural hospitals, and I'm pleased to be given the opportunity of discussing these issues with you today.

All too often, official Washington seems to govern in the conviction that "bigger is better", at least more important politically.

As a result, federal laws and rules frequently discriminate against smaller communities. Nowhere is this more evident than in federal regulations governing hospitals.

This was made painfully clear to me when I came to Washington as a newly-elected Congressman. You no doubt remember the national health planning guidelines established in the 70's by the Department of Health and Human Services.

These guidelines were tailored to the size, the functions, and the needs of metropolitan hospitals. They would have set unfair standards for hospitals in small towns. Many would have been forced to close.

These guidelines were not fair to rural areas. I'm sure Joe Califano, who ran the Department at that time, still remembers me delivering a pick-up truck full of angry letters from Montanans to his office. Enough of you banded together to see to it that the most inequitable sections of these guidelines were revoked.

But I learned an invaluable lesson from that experience. Like it or not, most policymakers in Washington have a hard time understanding that the solutions to health problems in Manhattan, New York, are not the same as they are in Manhattan, Montana.

Making sure federal health programs reflect that fact has been one of my top priorities. In the past couple of years, most of my time has been spent on Medicare's Section 223 Cost Limits, and—just this year—Prospective Reimbursement.

I would like to discuss these Medicare policies with you, but first I want to step back and look at the health system as a whole.

HEALTH COSTS

As you well know, today we are spending more than ever for health care, but getting less for our money.

Health expenditures—public and private—are continuing to increase even though the economy is showing very little

National health expenditures—the amount we Americans spend on health—rose last year to $287 billion. That's about 10 percent of the Gross National Product—up from 6 percent of the GNP in 1965.

Spending for hospital care is the largest component of these outlays. So, while the consumer price index tumbled from almost 13 percent to 5 percent last year, we find that progress against inflation stopped at the hospital door.

In 1982, hospital costs went up three times the national inflation rate. Federal outlays for Medicare rose 21.5 percent last year. And the cost of private health insurance rose 16 percent in 1982—the biggest increase ever.

Rising health costs are a national problem. Federal, state, and local governments—who pay 42 percent of the health care bill—are wracking up record budget deficits to meet the soaring costs of Medicare and Medicaid.

Increased health expenditures affect the private sector. Workers draw lower wages because employers must pay higher health insurance premiums.

And patients pay higher prices because companies have to pass on much of the higher health insurance premium costs.

In some cases, these costs have contributed to American industry's loss of its competitive position. U.S. Steel, for example, estimates that the cost of health benefits add an extra $20 to the price of each ton of steel. And American auto companies figure the cost of employee health benefits to be as much as $400 on each car produced. That's more than one-quarter of the reported $1,500 cost advantage that Japanese cars have over ours.

In addition, I read recently that the major supplier for the Chrysler Corporation was not steel—it was Blue Cross and Blue Shield!

CONGRESSIONAL ACTION

My colleagues in Congress—Republicans and Democrats—read these statistics, and they are demanding change.

They want to see results.

That's why the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982—which extended and placed a year-to-year cap on Medicare's Section 223 Cost Limits—moved so quickly through Congress.

That's why the House Ways and Means Committee and the Senate Finance Committee drafted a new hospital prospective reimbursement plan this past Spring.

There is no doubt in my mind that Congress is committed to putting a lid on what the federal government pays for health care.

The key difference between the situation today—with TEFRA controls and the new DRG payment system—and the situation a few years ago when the Carter Hospital Cost Containment bill was defeated in this: The DRG system applies to medicare only, where Carter's Cost Containment plan applied to all payers, and, thus, represented wholesale regulation.

Congress and the Administration want Medicare to be a prudent buyer for the health services it purchases from hospitals. For the time being, federal policymakers are willing to let Blue Cross, commercial insurance companies, businesses, and private-pay patients fend for themselves in their dealings with hospitals. To the extent that these parties are dissatisfied with hospital charges, you can anticipate pressure on Congress for increased hospital regulation.

TEFREA/PROSPECTIVE REIMBURSEMENT

The point I am making is that Congress is interested in limitng federal expenditures for health by whatever means it can find. Congress will be guided less by ideological commitment to regulation or competition strategies than by pragmatism. If an approach saves money, Congress will give it serious consideration.

It's time each of us stopped blaming the other guy for the health care cost problem. I think it is fair to say that government, consumers, physicians, insurers, and hospitals are each responsible to some degree for the cost problem we have today. For the most part, we've only been acting the way the system encouraged us to act.

There is plenty of room for change. I think the new DRG payment system is a first step in the right direction. But more needs to be done.

For example:

We need to make sure that the new DRG system does not lead to excessive cost-shifting. I know my colleagues are following this issue closely. If such cost-shifting does occur, you can expect greater pressure for all-payor rate regulation.

The question will be: should the regulation be imposed at the federal level or allowed to develop at the state level?

We need to ensure that the DRG system, which creates incentives for additional hospital admissions and sophisticated treatment, does not lead to over-utilization, unnecessary admissions, and "DRG creep."

I think physician peer review can play an invaluable role here and I urge you to reconsider your opposition to the federal Physician Peer Review program. The large employers and commercial insurers who are most concerned with holding down their health costs are committed to this utilization review mechanism. They spend private sector dollars for physician peer review because it saves money. It is good business. That's a fair yardstick by which to measure public programs.

We also need to make sure that the DRG payments made to hospitals are set at the right level. These rates should be allowed to increase from year to year to permit the development and use of innovative technology. The DRG categories should be periodically recalibrated.

I was successful in convincing my colleagues of the need for a Prospective Reimbursement Assessment Commission to take on this job, and I intend to see that it is funded. I know that the AHA supports this Commission. If DRG payments are politicized—and I fear they may be—hospitals will be underpaid for the services they provide.

In addition, we need to make sure that physicians' costs are also addressed. I don't think very many people realize that Medicare Part B expenses are increasing at a faster rate than Part A hospital expenses. More work needs to be done in this area before we take legislative action. But I don't mind telling you that many of my colleagues would like to see the DRG system expanded to include payments to physicians when they practice in hospitals.

Finally, we need to come to grips with some very basic questions concerning access to health care. We need to decide what the public role should be in paying for care for those who have no insurance.

I know that "free care" and "bad debt" have a very real impact on your hospitals and their ability to remain afloat financially.

The problem is aggravated in rural areas where fewer people have insurance and where hospitals are extremely dependent on Medicare reimbursement dollars. I wish I could tell you what the future holds in this area, but I cannot.

I can only say that there is very great competition for the federal dollar—from the need to provide for national security, to the need to retire the deficit, to the need to maintain the Federal role in other social programs.

SMALL RURAL HOSPITALS

Before I leave you today, I want to share with you my thoughts on how the new DRG reimbursement system will affect rural hospitals. You may know that I have been particularly interested in how "sole community provider" hospitals are reimbursed by Medicare.

For those of you not familiar with Montana, I should mention that 49 of Montana's 60 hospitals have fewer than 100 beds. In fact, 45 of these hospitals have fewer than 50 beds, and most are in isolated rural areas. The problems facing rural hospitals are a major interest of mine. I pay special attention to how Medicare policies affect these hospitals.

Two years ago, when the Section 223 Cost Limits were squeezed to a lower level, I found that those Montana hospitals that were eligible for "sole community provider" exemptions from these limits were denied them.

I personally intervened in these cases, secured a GAO investigation of the matter, and got most of HCFA's denials overturned. And I was able to exempt small rural hospitals with less than 50 beds from Section 223 Cost Limits.

The Reagan Administration came to Washington promising to remove excessive federal regulation and to be responsive to local needs. But I have found that small community hospitals—those with the smallest financial, legal, and technical resources to wage a fight against unfair federal regulations and policies—were those that were most subject to unfair treatment.

This past year, during hearings on HHS's plan for prospective payment, I reminded

HHS officials and my Finance Committee colleagues of my experience with how HCFA ran the Section 223 program. I found that it is better for Congress to draft detailed laws than to trust federal administrators. I refused to accept Secretary Schweiker's pledge that federal officials would take care of "sole community providers'" special needs on an administrative case-by-case basis.

I argued for statutory protections in the Finance Committee hearings and markup sessions, as well as in the House-Senate Conference on Prospective Payment.

I can tell you that I was surprised I did not get more support from my colleagues. The protections I wrote into the prospective payment legislation are the best I could get for small rural hospitals. I hope they are sufficient.

If a small rural hospital experiences a drop in utilization of more than 5%, Medicare is obliged to make additional payments to the hospital to compensate it for its additional costs. The HHS Secretary does not merely have *discretion* to act here—he is *obliged* to act!

My past experience with the discretion of HHS officials regarding "sole community provider" status was enough to prevent me from giving in to HHS on that point.

And what will the future hold?

As you know, small hospitals will soon begin the new DRG system—set to be phased-in this fall. Small rural hospitals will enter the first year of the DRG phase-in period and remain there indefinitely—receiving payment based 75 percent on the hospital's own cost experience and based 25 percent on DRGs.

The "safety net" of a 5 percent downturn in utilization will be in place. This will protect "sole community providers" from conditions beyond their control—like strikes, fires, inability to recruit physician staff, prolonged severe weather conditions, or similar unusual occurrences with substantial cost effects.

And these hospitals will have a one-time option of voluntarily giving up "sole community provider" status and electing to receive Medicare reimbursement under the regular DRG system.

Only time will tell us how well these small hospitals will fare.

I hope these hospitals prosper—the residents of small towns around the country deserve it.

OREGON HEALTH SCIENCES UNIVERSITY RESEARCH CENTER

Mr. HATFIELD. Mr. President, efforts concerned with the prevention of disease and the maintenance of well-being are the wisest possible investments of our Nation's financial resources. It is especially important that we pursue these efforts with the greatest efficiency, with the highest concern for quality, and with as broad and widely disseminated base of knowledge as possible.

Therefore, Mr. President, I am extremely pleased that the Congress agreed to provide $20.4 million in the fiscal year 1983 supplemental appropriations bill recently signed by the President, to establish the new Biomedical Information Communication Center at the Oregon Health Sciences University in Portland.

Of the total, $14.5 million will be funneled through the National Library of Medicine to the Oregon Medical School for remodeling and expanding the existing library space to house the computer and other technologies and to maintain an academic health resource network for the State of Oregon. It will include an addition of 50,000 square feet to allow for these additional activities. Another $5.9 million will come from the Department of Health and Human Services to enable continued planning of the project and for providing equipment locally for research and development, and for linking the system to hospitals, medical groups, other academic centers and libraries on a demonstration basis.

Through the center, biomedical literature available both at the health sciences university and in national data bases will be brought up to adequate quantitative volume and be converted to computer-readable form. In addition, a network will be developed with the Oregon Medical School as the hub to hospitals and the offices of health practitioners of all types. This network will disseminate information, provide opportunities for computer-teleconferencing for use in teaching, for consultation on clinical practice and development of creative approaches to continuing medical, dental and nursing education. It will also serve as a conduit to data bases in other scientific fields.

Information is the lifeblood of the health professions. The storage, retrieval, organization, selection, evaluation and presentation of biomedical information can determine the quality, cost-effectiveness, and the timeliness of the care that we provide to those who are sick and will expand our outreach prevention activities to the healthier population. The very real revolution now taking place in the management of information in our modern age offers unprecedented opportunity to merge evolving technologies and the library functions of academic health centers to produce new and infinitely more valuable capabilities.

Today, technology changes so rapidly that it is extremely difficult in the professional and academic setting to make maximum use of new developments in the health care field and the technology that communicates them.

In an excellent analysis of this subject conducted under the aegis of the Association of American Medical Colleges and the National Library of Medicine, the recommendation was made that several "prototype integrated library systems and academic information resources management networks" be established in this country. The Biomedical Information Communication Center in Oregon will be just such a prototype and a national model.

In the academic setting, this computerized health information system will bring an outmoded health sciences library into the modern age and, along the way, will convert a mass of disorganized material into an easily retrievable, cohesive form for the latest in research, information and state-of-the-art scientific developments.

It is clear that what we now call biomedical libraries must evolve expeditiously into such biomedical information communication centers serving students and practitioners in their local regions and providing them with easy entry into national information networks concerned with biomedical sciences. The challenge before us is to harness the benefits of new and emerging advances in microelectronics, in computerized thinking and in technologies yet to be conceived and to so with such skill that we assure high quality care and lifelong professional learning at the lowest possible cost.

This center will play a significant role not only in improving in health care delivery system in our State but will have far-reaching economic benefits in these areas as well.

Our Nation's health research effort has made and continues to make a major contribution not only to the well being of our citizens but also to the Nation's economy. I am convinced that the strengthening of our State's economic future is closely related to research and thus to successful commercial developments related to research discoveries. In specific ways, academic research and industry are closely linked in other than the obvious. For example, work on laboratory instrument systems contributed to the development of minicomputers. Laboratory freeze-drying techniques have led to modern day food preservation. Research in fiber optics has made possible major advances in telecommunications.

And in a significant but more general sense, research dollars have the greatest multiplier effect in our economy. For each $1 invested in research, an estimated $13 in savings are realized due to reduced incidence of illness and medical costs and increases in life expectancy. Examples: Eradication of polio—$2 billion annual savings; rubella vaccine—$500 million savings due to the prevention of congenital deformity occurring in children of pregnant mothers who develop German measles; and $4.3 million savings weekly in hospital costs from development and widespread use of the hepatitis B vaccine.

This newest project at the Oregon Health Sciences University along with the recently developed advanced Institute for Biomedical Research in Portland will play a significant role in attaining these results. The research and development to be conducted at

the medical school and the transfer of biomedical information are certain to stimulate the growth of a depleted local economy by encouraging new ventures in technology, microelectronics and artificial information systems. Equally important, by improving the flow of information to the practitioners, the accomplishments at the new center will help to improve quality and to reduce the cost of health care in Oregon, in the Pacific Northwest, and in the Nation.

Since all of our academic health centers are extremely important to the vitality of this Nation, and since they are all mutually interdependent, enhancing one benefits them all. In my discussions with the leadership of the medical school establishment in Portland, I have received repeated reaffirmations of their commitment to excellence and their obligation to serve the Nation as well as their region. This will be accomplished in full partnership with all appropriate health professions and establishments, hospitals, physicians and other practitioners, scientific laboratories, colleges and universities, library personnel, and the business community.

This 21st century library system may be first in line, but is only one expression of my support for the strengthening of Oregon's postsecondary educational system in its role of increasing our State's contribution to research oriented toward the enhancement of the human condition.

The true meaning of our national defense is found in the type of venture which will be made possible through this Federal investment in our Nation's health care system. I am proud to have joined forces with the forward thinkers in my State and my congressional colleagues in the successful development of this plan.

AVERELL HARRIMAN ON THE NUCLEAR TEST BAN TREATY

Mr. KENNEDY. Mr. President, one of the most distinguished statesmen of this generation or any generation in American history, Averell Harriman, recently returned from a trip to the Soviet Union. During that visit Governor Harriman and his wife Pamela became the first Americans to have a long discussion with Soviet President Yuriy Andropov. They have shared their views of that discussion with their fellow Americans on a number of occasions since their return.

One of the most eloquent expressions of Governor Harriman's concern appeared recently in the New York Times. In an article commemorating the 20th anniversary of the Nuclear Test Ban Treaty, which was skillfully negotiated by Averell Harriman after President Kennedy's speech at American University in 1963, the Governor reflected on the test ban and its lessons for the 1980's.

I am proud that Governor and Mrs. Harriman have long been friends of my family; all Americans should be proud of the contribution which they both continue to make to our country.

Mr. President, I ask unanimous consent that Ambassador Harriman's article, entitled "1963 Test Ban Treaty: It Can Be Done Again," be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, July 24, 1983]

1963 TEST BAN TREATY: IT CAN BE DONE AGAIN

(By W. Averell Harriman)

WASHINGTON.—Twenty years ago tomorrow, the United States, the Soviet Union and Britain initialed the first major arms control agreement among the nuclear powers—the limited test ban treaty.

Prohibiting the testing of nuclear weapons in the atmosphere, in the oceans or in outer space, this treaty greatly reduced the worldwide peril of radioactive fallout. It began sustained talks on nuclear weapons leading to treaties on strategic arms and against the spread of nuclear weapons. It eventually involved more than a hundred nations in limiting nuclear testing.

Twenty years later, this structure of progress is imperiled. The United States and the Soviet Union are adding new weapons that will make arms control even more difficult. Ten more nations could hold nuclear weapons within a decade. Three unratified nuclear arms treaties are in danger of unraveling. I am disturbed that the security and stability provided by the 1972 Anti-Ballistic Missile Treaty is being undermined by the illusion that we can obtain advantage in these weapons. I am even more disturbed to hear consideration of discarding the limited test ban to test nuclear weapons for use in outer space in the naive belief that war in space will not reach back to earth.

If we accept this situation complacently, then we shall drift toward nuclear war. In an age of 50,000 nuclear weapons, we must actively and urgently seek a safer world.

Under President Kennedy's direction, I was privileged to negotiate the limited test ban for the United States. As I arrived in Moscow, reporters asked me: "How long is this going to take?" I responded "If Chairman Khrushchev wants an agreement as much as the President wants it, we should be out of here in two weeks." On the 13th day, we initialed the treaty; on the 14th, we left for home.

I believe this attitude helped establish the pace of these negotiations, but success was not due to the spur of these arrival remarks. We succeeded then because leaders and citizens deeply wanted success.

There are other lessons that remain relevant today. The first is that reducing the risk of nuclear war does not require perfection on the part of our adversary or the resolution of our many differences. The limited test ban was born after the most dangerous moment in American-Soviet relations—the Cuban missile crisis. Furthermore, both nations were pursuing a new arms race in missiles that suddenly reduced the time for extinction from hours to minutes. From Africa to Berlin to Southeast Asia, tensions were high. Yet despite many problems that could have been used to avoid negotiations, both countries courageously took a step toward peace.

If we could succeed then under those conditions, there is no reason why we cannot succeed today. The fact that the prevention of nuclear war is in the Soviet Union's interest does not diminish the fact that it is also in the United States' interest. Indeed, prevention of nuclear war is fundamental to our survival.

Another lesson from 1963 is to begin with those matters on which we have the best chance of agreement. In arms control, we should focus on areas of common interest rather than attempting, for example, the herculean task of restructuring the entire Soviet nuclear force. In 1963, we addressed only nuclear testing. Within that area, we chose a limited test ban because we believed that it was achievable. This is not to argue today against taking bold steps, for the fact that we did not achieve a complete test ban in 1963 or ban multiple warheads a decade later has haunted us ever since. This is to say, however, that small steps, if the only steps feasible, are better than none at all. And if they are made to serve as steps—not excuses for further inaction—the major change can still result.

A final lesson is the necessity for serious negotiations. In 1963, we designed a proposal that proved to take only two weeks—not two decades—to negotiate. The essence of successful negotiation is to construct an agreement that serves the interests of the participants. The effort to write a contract that seeks surrender is doomed to fail.

I believe that President Yuri V. Andropov takes the growing risk of nuclear war seriously, as do we. During my meeting with him in early June, I was not surprised by his comments critical of American policy, to which I responded firmly. But he also expressed to me a clear—and in my judgment genuine—sense of concern and imminent danger. "Today," he said, "the Soviet people and the American people have a common foe—the threat of a war incomparable with the horrors we went through previously. This war may perhaps not occure through evil intent, but could happen through miscalculation. Then nothing could save mankind."

This sense of urgency, repeated several times, does not imply that he will pursue Soviet objectives with any less vigor—only that he is deeply concerned that events are propelling both superpowers toward disaster and that he believes both countries must respond to this danger.

He also stressed the desire for "normal" relations with the United States and the importance of reciprocity. The conclusion I reached was that he does not expect the United States alone to alter its position in the interest of a more stable, safer world. In response to my questions, he spoke of "joint initiatives," proposals that might ease the current situation. He emphasized that the Soviet Union was prepared to work with the United States in the common interest of both.

The opportunity for constructive action exists today. The transcendent responsibility owed to our people is to explore every possibility for agreement on nuclear arms control.

The limited test ban treaty demonstrates that it can be done even in difficult times. Let our descendants look back upon it and see a beginning—not a light that briefly burned and slowly flickered out.

TED VAN DYK AND THE CENTER FOR NATIONAL POLICY

Mr. KENNEDY. Mr. President, the New York Times of July 22 contained an article of great interest to all of us concerned with the critical issues challenging the Nation. The article described the creation of the Center for National Policy and the work of its highly effective president, Ted Van Dyk. The center is a young organization—founded in 1981—but it has already made a significant contribution to the public interest and to the national debate on questions of the highest importance to us all.

The center's unique combination of insight and practicality is a welcome addition to the dialog on the issues facing Congress and the country. Its publications in areas such as economic policy and arms control have established a high standard of analysis and are frequently cited in our debates. Mr. Van Dyk and his associates deserve great credit for the successful enterprise they have launched in such a short span of time and for their skillful leadership in the search for new ideas. I commend them for their accomplishment, I ask unanimous consent that the article to which I have referred be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, July 22, 1983]

SPELLING OUT THE "DIFFICULT CHOICES" FOR DEMOCRATS

(By Bernard Weinraub)

WASHINGTON, July 21.—Ted Van Dyk was seated in his office at the Center for National Policy near Dupont Circle the other morning when there was a phone call from a Democratic Presidential aspirant.

"When will you be finished with the paper on industrial policy?" asked the candidate.

"Later in the fall," replied Mr. Van Dyk.

"Hurry up," came the response." I've got to find out what I'm supposed to think."

Mr. Van Dyk, a cheerful, bespectacled 48-year-old Democrat, declines to identify the candidate but delights in the story. "That's the service we're trying to provide," he said. Mr. Van Dyk served as an assistant to Hubert H. Humphrey in the 1960's and has been president of the policy center since it's founding in 1981 as a virtual Democratic Party in exile.

"The Democrats got together after the Reagan election and said what are we going to do after this enormous political event," said Mr. Van Dyk. "There was a consensus that the intellectual gas tank had run empty. We had always taken power for granted. We had always assumed that if the Democrats didn't have the Presidency, at least we would control both houses of Congress. Came the 1980 election, the realization set in that we'd have to develop some real alternatives."

NO ONE CANDIDATE FAVORED

Within Washington, the Center for National Policy has emerged not only as a refuge for Democrats seeking to develop credible alternatives to the Reagan Administration, but also as a contact point for a Democratic establishment that has rarely gathered under a single umbrella. The tax-exempt organization strenously avoids tilting toward any particular candidate.

"We relate to all and align with none," said Mr. Van Dyk.

The center's chairman is former Secretary of State Cyrus R. Vance. Its board embraces supporters of virtually all the prospective Democratic Presidential candidates, and includes Edmund S. Muskie, W. Michael Blumenthal, Eleanor Holmes Norton, Stuart Eizenstat, Robert S. Strauss, Vernon E. Jordan, Felix Rohatyn, Howard Samuels and W. Willard Wirtz. And lesser-known but powerful figures who served in the Pentagon, the Commerce Department and the Treasury Department in the Carter Administration have volunteered to work for the center.

Working means producing policy papers on military policy, on taxes and budget choices, on education, on foreign policy, on inflation and employment.

Critics within the Democratic Party say that the center has not quite lived up to its expectations because, in attempting to blur ideological differences within the party, the group has produced detailed but fairly predictable documents seeking to please all spectrums. "We have generally not appealed to the ideological, peace movement types," Mr. Van Dyk conceded.

Unlike such conservative groups as the American Enterprise Institute, which receives considerable financial support from corporations, the center has been existing on a "shoestring," according to Mr. Van Dyk. "It took the A.E.I. about 15 to 20 years to get from a broom closet to a $10 million a year budget," he said. "We started at $500,000."

Its budget this year, $1 million, was mostly provided by foundations, labor unions and individual donors. During an interview with Mr. Van Dyk, his card file was open to Warren Beatty's name with several phone numbers in New York and Los Angeles. "He's on our board, and conducted several fund-raisers," said Mr. Van Dyk.

The alternatives offered by the Democratic economists, lawyers and strategists in a series of papers issued to candidates as well as to members of the Senate and House involve "difficult choices, painful adjustments, political trade-offs," said Mr. Van Dyk.

Indeed, the agenda he enunciated strikes at the very core of many programs fostered by Democrats over the decades.

"What is really imperative, and everybody will admit it behind closed doors," Mr. Van Dyk said, "is an all-out attack on middle-class entitlement programs, veterans' benefits, Federal pensions, medical programs, Social Security. The kinds of things that have been sacrosanct politically.

"There seems to be an equal consensus that the rate of spending increase in defense has to be moderated and turned back," he said. "And there have to be changes in the tax system with the net impact of increasing Federal revenues."

"The term of reference is very important," said Mr. Van Dyk. "Democrats have always talked about how do you divide the pie. L.B.J. talked about an endless cornucopia which would keep generating growth. Now Democrats begin by asking how do we make the pie grow."

"There are tensions," said Mr. Van Dyk. "There are generational tensions. You have a lot of people, over 55, who have grown up in another ideological context and have a difficult time of adjustment. You have a lot of younger people who are superpragmatic, who don't really have a particular ideology, who have grown up in an era in which interest groups and media and money were really the terms of reference for getting elected. You have this enormous gap."

ROLE OF INTEREST GROUPS NOTED

Beyond this, Mr. Van Dyk said, the Democrats, far more than Republicans, must find ways of dealing now with traditional interest groups whose views may not always coincide with the overall aims of the party.

"Labor, senior citizens, the black community, supporters of Israel, people concerned with the environment, women's groups. You name it," he said. "The question is how do you address the often legitimate concerns of these groups and still provide the national policies that fit the larger interests."

S. 800, THE OCEAN AND COASTAL DEVELOPMENT IMPACT ASSISTANCE ACT

Mr. CHAFEE. Mr. President, recently I joined with Senator STEVENS in sponsoring S. 800, the Ocean and Coastal Development Impact Assistance Act.

As we continue to pursue the development of offshore oil and gas resources to insure plentiful energy supplies for the future, it is extremely important that we take steps to protect coastal and marine areas and support State efforts to mitigate the consequences of offshore energy activities. An accelerated program to explore and develop the potential oil and gas resources of the Outer Continental Shelf is now underway. At the same time, budget constraints have jeopardized Federal support for many worthwhile coastal protection programs.

This legislation is a timely and comprehensive effort to strengthen the partnership between States and the Federal Government in preserving precious natural resources. It recognizes that coastal States must take steps to deal with the consequences of OCS energy development now being encouraged by the Federal Government. It establishes an ocean and coastal resource management and development fund, supported by a small percentage of revenues derived from OCS oil and gas leasing, and allocates these funds to coastal States. One-third of a State's allocation is to be managed by local communities. This support will enable States and localities to carry out important coastal development research, education, and planning activities. State and local governments are best suited to assess the environmental and economic effects which continued OCS development will exert upon coastal regions, and to plan for the effective future management of these regions.

The legislation's formula for the allocation of funding correctly takes into account factors such as a State's proximity to leased area, the presence of coastal energy facilities, length of

coastline and amount of oil and gas produced off State shores. In addition, the formula rewards States which have federally approved coastal zone management programs in place.

State and local governments have expressed strong support for this legislation and have recently been joined by several distinguished environmental organizations such as Friends of the Earth and the Natural Resources Defense Council.

Few investments could be more crucial for our Nation than preserving coastal habitats and protecting marine resources. This investment is particularly important to the State of Rhode Island, where our coastline is a vital economic and recreational asset. The prospect of intensified OCS development activities poses a tremendous challenge for communities in Rhode Island and other States to prepare for changing land use patterns and the effects of commercial growth in coastal sections. The coastal energy impact, fisheries research and coastal zone management programs which have assisted States in these endeavors have in recent years been threatened by Federal budget constraints. S. 800 would provide a more secure source of funding for these programs and would also guarantee the continuation of activities under the national sea grant college program which, through the University of Rhode Island and other institutions, has provided outstanding research, education and advisory services in marine resources.

S. 800 is a unique opportunity to insure a future balance between offshore oil and gas development and the sound management and conservation of our Nation's coastal resources. I urge my colleagues to support its enactment.

SOVIET SALT VIOLATIONS

Mr. SYMMS. Mr. President, I ask unanimous consent that the following lead article in the summer issue of Strategic Review, "Soviet Violations of Arms Control Agreements: So What?" be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Strategic Review, summer 1983]

SOVIET VIOLATIONS OF ARMS CONTROL AGREEMENTS: SO WHAT?

(By Malcolm Wallop)

(The author: Senator Wallop (R.-Wyoming) was first elected to the U.S. Senate in 1976. His committee assignments include the Select Committee on Intelligence, and he is Chairman of its Budget Authorization Subcommittee. Senator Wallop was a Congressional Adviser to the SALT negotiations. A graduate of Yale University, he served as a first lieutenant in the U.S. Army Artillery, 1955–1957.)

IN BRIEF

The debate over Soviet violations of arms control agreements and treaties (particularly SALT) is featuring a great deal of quibbling over technical and legalistic trivia, thus both missing and distracting from the fundamental issue for debate: namely, the state of the U.S. military posture after two decades of arms control efforts. Beyond reflecting on Moscow's cynical approach, the violations and our reactions to them are symptomatic of a basic phenomenon in Western democracies well documented by history: a mind-cast that, once entracked on the rails of hopes and fears, comes to regard the arms control "process" as more important than both the actual results achieved and the other side's compliance with them—and more important even than the adversary's displayed intentions, which the continuing process is supposed to shift in the direction of peaceful and faithful behavior. The issue of violations is baring the kind of self-contradictory policies that public opinion in a democracy cannot long support.

A debate is unfolding in the United States over the facts and implications of violations by the Soviet Union of existing arms control agreements. Thus far the debate has swirled around specific cases of such violations: the arguments have been draped in technicalities and legalisms. It is the contention here that, in focusing on such narrow parameters, the debate not only fails to shed any real light on the difficult military and political choices that the United States now faces, but, indeed, holds the danger of further distorting and trivializing the fundamental questions relevant to our country's security.

Almost a generation ago many prominent Americans in and out of government, investing hopes and reputations in arms control, shaped this country's military and intelligence plans accordingly, and convinced public opinion that all of this would make the world safer. Today public opinion in the West rightly fears war more than ever. It anxiously looks for expedients to lift the incubus, and for people to blame. Whereas in the mid-1960s Soviet strategic forces were vulnerable to superior American ones, today numerically inferior American forces are in the deepening shadow of a relentlessly growing Soviet arsenal. And beneath this shadow, the Soviet global offensive has gained a momentum that would have been considered unimaginable two decades ago.

In short, any objective analyst in the West now must realize that a generation's labors on behalf of arms control have not borne the anticipated fruit. Nonetheless, all we have done in the name of arms control—the very depth of our involvement with it—renders us unable to confront our strategic problems directly. Although no one in public life today will argue that any specific arms control scheme would be accepted and adhered to by the Soviets—and would make us all safer—we still discuss our hopes and fears in terms of arms control, anticipating that today's realities will not again be reflected in the results of tomorrow's agreements.

Lately that discussion has come to turn upon one question: Do certain Soviet activities violate arms control agreements or do they not? Yet, that question obscures another, much more important one: What do the Soviet activities in question tell us about the possibilities and limitations of arms control? Our task here is to answer this question. Once that is done, only then can we consider Soviet strategic plans—and our own—in terms of their intrinsic merits.

THE DEBATE OVER "NEW" MISSILES

Two fellow members of the Senate, James McClure of Idaho and Joseph Biden of Delaware, have drawn together respectively the case for the proposition that the Soviets are violating SALT agreements, and the case against it. Senator McClure contends that the Soviets are violating the most important provision of the SALT II Treaty—Article IV, Paragraph 9—by flight-testing two new-type ICBMs. Senator Biden argues that Senator McClure is "simply and flatly inaccurate."

The SALT II Treaty indeed allows only one new-type ICBM to be developed by either side. The two Soviet missiles that have been tested are sufficiently different from all other missiles to be new types. Yet, the Treaty also stipulates that the differences that determine a new-type missile—discrepancies of more than 5 percent in length, diameter, launch-weight and throw-weight between the missile tested and all other missiles—may not be counted as violations until after the twelfth test.

Inasmuch as the Soviets have only conducted thus far three tests, Biden has a technical point. But McClure has a substantive one. The second new Soviet missile, known as the PL-5, differs in throw-weight by more than 200 percent and in length by more than 2 meters from any other Soviet missile remotely like it. No matter how many times it is tested, these characteristics will not change. Moreover, modern test programs may not require more than twelve launches before a weapon becomes operational. Neither set of arguments, however, touches the crucial point: while the United States has produced one new missile (the Trident I) and is planning two (MX and Trident II), the Soviets have produced four fourth-generation missiles and have begun a fifth generation likely to include six new missiles.

SOVIET MISSILE NUMBERS AND "RELOADS"

Senator McClure charges that the Soviets have exceeded the SALT II ceiling of 1,320 MIRVed missile launchers and bombers equipped with long-range cruise missiles. Senator Biden cites the CIA's count of 788 Soviet MIRVed ICBMs and claims that the total of MIRVed ICBMs, SLBMs and bombers capable of carrying cruise missiles does not go above 1,320. The legal issue turns on whether one counts the "Fencer," the Soviet equivalent of the American FB-111 bomber. Once again, however, the legal issue is of scarce practical relevance. Even if one chose to agree with Senator Biden, one would not thereby skirt the issue of the threat which the Soviet Union's nearly 6,000 counterforce warheads carried by the Soviet MIRVed systems pose to the United States, or change the fact that our most potent MIRV, the Mark 12-A, is considered to have only about one chance in three against Soviet silos.

Senator McClure contends that the Soviets have violated SALT II by testing the "rapid reload of ICBM launchers" and by stockpiling at least 1,000–2,000 missiles which could be refired from standard silos. These missiles could also be fired by "soft" launchers from covert sites. Senator Biden considers this point to be "succinctly rebutted" by the U.S. Defense Department's volume, "Soviet Military Power", which states (on page 21): "The Soviets probably cannot refurbish and reload silo launchers in a period less than a few days." Biden concludes: "Although the Soviet Union might have a limited capability to reconstitute its

strategic forces after an initial firing, there is no real indication of a rapid reload capability." McClure concedes that a legal grey area exists because "the Soviets never agreed on a definition of 'rapid'." All parties refer to the same data; during the summer of 1980 the United States observed that the Soviet Union routinely practiced reloading its principal missile silos many times during war games. This procedure takes a few days.

However, all the parties concentrate on the Treaty so fixedly that they miss the point. Whether the Soviet practice of reloading missiles is legally "rapid" or not is quite irrelevant to American security. Ever since the beginning of the arms-control process in the mid-1960s the United States has based its entire strategic policy on the notion that each side would only have about as many missiles as it has launchers. The Soviets never formally agreed to this; nevertheless, informally, in a thousand ways, they led us to believe that they did. Now we know that, probably from the beginning, the Soviets held a wholly different view of the matter. Thus, not only is it a virtual certainty that they have available for use many more missiles than overtly deployed launchers, but the implication is much larger: namely, that the Soviets do not share the Western view that nuclear war, if it ever comes, will be a mutually annihilating spasm. While American planning stops in effect at the edge of the contingency of a nuclear exchange, the Soviets are planning and practicing what to do after the first round. If this is not strategically significant, nothing is. Yet, as we can see, the arms control perspective is capable of trivializing even this fundamental factor in the nuclear equation.

OTHER SOVIET VIOLATIONS

Senator McClure says that the Soviets since 1976 have conducted at least 15 underground nuclear tests whose yield war probably above the ceiling of 150 kilotons specified by the Threshold Test Ban Treaty. Senator Biden cites an article by two geophysicists in Scientific American, in which they claim that charges like McClure's "are based on a miscalibration of one of the curves that relates measured seismic magnitude to explosive yield."

Some background is needed to understand this aspect of the debate. In 1977 some of the U.S. geophysicists involved in evaluating the yields of Soviet tests from seismic data became apparently distressed at the fact that they were consistently providing judgments on the basis of which the Soviet Union and, more important, arms control itself were being impeached. Therefore, they successfully lobbied for a change in the yardstick. Even then, the new and more liberal geophysical yardstick still shows a few Soviet tests to have been above 150 kilotons. Although there is really not much reason to prefer one yardstick over the other, the fact that one was abandoned because it gave uupleasant answers should give no one, least of all scientists, cause to rejoice.

TECHNICALITIES VERSUS STRATEGIC SUBSTANCE

I could go on with such comparisons, but my basic point already should have become clear: by thinking and arguing about Soviet activities in terms of the relationship of these activities to treaties—instead of relating them to security substance—both Senators are quibbling with trivialities while the strategic position of the United States crumbles apace. Moreover, those who argue in these terms inevitably cast themselves in the role of either the Soviet Union's prosecutors or defenders. Senator Biden has strongly expressed the wish, no doubt sincere, that he not be taken as the Soviet Union's defender. But how else can one characterize the invitation not to be alarmed by activities which are clearly threatening but which might possibly be shielded by some technicality as a contravention of agreements?

In one instance Senator Biden, like the geophysicists, has to resort to redefining the terms of the Treaty. He notes that the Soviets have encrypted just about all the telemetry in their tests of the fifth generation of missiles. Article 15 of SALT II prohibits encryption that impedes verification of the Treaty. Senator Biden notes that Soviet practices in this respect "raise questions" about whether the Soviets have violated the Treaty. Questions? These activities are not questions; they are answers!

Senator Biden says that "Soviet activities in regard to . . . the ban on the [mobile] SS-16 . . . can only make one wonder about the depth of Soviet interest in maintaining the SALT framework." In thus "wondering," he was no doubt inspired by the CIA's version of said Soviet activities. According to this version (reported by the Washington Post on April 9, 1982), the Soviets have some mobile SS-16 missiles (prohibited by the SALT II Treaty) at Plesetsk. They are ready to be fired. But because they are not being handled in a way that fits the CIA's definition of deployment, they are not "deployed." The point, again, is: Why cast for artificial defintions and technicalities that might becloud the issue of whether a given Soviet activity is or is not in contravention of SALT? Why not think—first, last and foremost—in terms of the strategic implications of the threatening activity itself?

Finally, Senator Biden, searching for a definition of what a violation of SALT II might be, has posited that if the Soviets were to have more than 830 MIRVed ICBMs, that would be a violation. A little later he noted in passing that by not having dismantled 95 strategic nuclear delivery systems as new ones have joined their forces, the Soviets now have more than the 2,400 permitted by SALT. Yet, he does not come out and say that the Soviets are in violation. Why not?

On a more fundamental level, Senator Biden has conceded that the Soviets have violated the Biological Warfare Convention of 1972. At the same time, he describes himself as "a strong supporter of the unratified SALT II agreement and of worthwhile future arms control agreements." Clearly these are contradictions that cannot be bridged with technicalities regarding Soviet compliance.

Senator McClure's position is more direct, but contains an anomaly. He so strongly hammers on the fact that the Soviets are cheating on the treaties that he leads his audience to infer that our strategic difficulties would vanish if only the Soviets could somehow be held to the letter of the treaties. Yet, not even the most enthusiastic advocates of arms control have claimed—at least not since the mid-1970s—that the treaties are so well conceived or drawn up that abidance by them will solve the future of mankind.

In short, even while the strategic position of the United States continues to erode, men of goodwill find themselves saying things about arms control which cannot halt that erosion, and that cast them in roles that they sincerely reject for themselves: apologists for the Soviet Union and/or apologists for the SALT process.

HOPE AND HISTORICAL LOGIC

We should not be surprised at the fact that assumptions based strictly or even predominantly on arms control often lead to sterile arguments. After all, the entire premise of arms control—that safety can be gained by mutual limitations on weapons—abstracts from the most fundamental fact that weapons are tools in the hands of men, not vice-versa. The propensities of men to kill or respect one another have never been basically affected by the existence of particular kinds of weapons. Genocide was routine in the ancient world. In our day, the greatest slaughters have been perpetrated by simple tools: barbed wire, starvation and hand-held weapons. Whether or not a weapon is dangerous depends on the direction in which it is pointed and on the intention of the person wielding it. Where nations are friends, there is no talk of the need to negotiate arms control. Where they are enemies, even total disarmament could only make the world safe for hand-to-hand combat.

In practical and historical terms, it is difficult to prove the proposition that arms control by itself leads either to peace or security. History affords no example whatever of nations possessed of serious reasons to fight one another who disabused themselves of those reasons by agreeing to limit the means by which they could fight. Nevertheless, the desire for peace is so natural and strong that it has always made attractive the claim that perhaps, just perhaps, all men are sane and all sane men want peace—which is in everyone's interest—and that the danger of war issues from the weapons themselves. If all sides can slowly rid themselves of the burdens of their worst weapons, they will simultaneously learn to value peace and to trust one another. But this appealing promise discounts the ever-present possibility that one side in the arms control process may be determined not only to pursue its goals as vigorously as ever, but also to use agreements as a means of achieving the other side's moral and material disarmament.

The stark record of our century is that arms control has been embraced by democracies as a means of exorcising the specter of war with dictatorial enemies—and that it has been exploited by dictatorships as a means of increasing their capacity for waging war against democracies. At various points along this historical road some within the democracies have asked whether there was any proof that the dictatorships really meant to keep their agreements in good faith. Others have answered that although there could be no real proof, democracies must take the lead and show good faith, because no one could afford the alternative.

In the normal flow of international negotiations, a determination of the other side's intentions is a prerequisite to the process that culminates in agreements. In the case of arms control, any issue of the other side's intentions tends to be considered *a priori* as disruptive to the perceived imperative of reaching an agreement. Instead, we as democracies invest in the agreements themselves the hope of favorable omens of the opponent's intentions. Questions regarding a dictatorship's compliance with arms control agreements go to the heart of the question: What are the dictatorship's intentions? But since the arms control process itself is based on at least a suspension of questions about intentions, the issue of compliance

must thus be suspended as well, lest the process be disrupted.

PATTERNS OF DEMOCRATIC BEHAVIOR

Some of the generic difficulties in the path of rational discussion of compliance with arms control agreements were outlined by Fred Iklé in his classic article, "After Detection—What?" in the January 1961 issue of Foreign Affairs. They are well worth reformulating after nearly a generation's experience.

First, unless the violator acknowledges that his activities constitute a violation, politicians in a democracy are likely to feel that the evidence in their possession might be insufficient to convince public opinion that a violation has occurred—or at least that trying to persuade the public would be a thankless task. Moreover, many politicians, having staked their reputations on the agreements, will fear being damaged in the public's esteem if the agreements were perceived as failures.

Second, a political leader who declares that arms control agreements which are a fundamental part of national policy have been violated, thereby faces the obligation to propose a new, redressive policy—one that will make up for the other side's violations and assure his nation's safety in an environment more perilous than had previously been imagined. Inevitably such a policy looms as more expensive and frightening than continuing on the arms control track. Few politicians are willing to take this step of personal and political valor—especially if they can rationalize away the observed violation as "insignificant." Iklé in his article cites Stanley Baldwin's admission that fear of losing an election had prevented him from admitting that Germany was violating the Treaty of Versailles. This remains a rare example of honesty, albeit after the fact of dishonesty.

Third, politicans can always hope—more or less in good conscience—that continuing negotiations will eventually reach the goal of a stable and mutually accepted peace and that therefore "this is not a good time" to accuse the other side of bad faith and risk driving it from the bargaining table. But when is it a "good time"? Moreover, as time passes and the dictatorship's arsenal rises in relative terms (abetted by the violations), the premium on finding a modus vivendi with it rises apace. The net result is that the brave declarations that accompany the signing of arms control treaties, according to which this or that action by the dictatorship (usually some form of interference with verification) would cause withdrawal from the treaty, become dead letters.

Finally, these inhibitions are compounded when they are involved in alliance diplomacy among democratic nations. Each alliance partner is likely to find in the other a confirming reason for not pressing the issue of violations.

THE CONTEMPORARY MIND-SET

These historically documented attitudes—which ushered in the tragedy of World War II—have been strengthened in contemporary times by the seductive premises of the nuclear age. The primary such premise is that the only alternative to arms control is an arms race that is certain to lead to the nuclear holocaust and the end of the world; therefore, there is no alternative to continuing arms control negotiations and making the best of them. In this view the "process" of negotiations is more important than the tangible results achieved—and, by extension, more important than the other side's adherence to solemnly agreed-upon results.

The second premise relates to the fashionable notion of "overkill": since each side already possesses enough weapons theoretically to obliterate the adversary, any advantages wrested by the other side are "marginal" at best. It deserves mention that this "marginality" tends to be applied only to Soviet strategic programs: by contrast, American counter-programs, like the MX missile, are deemed "provacative."

This latter premise illuminates the cavalier attitude of so many U.S. officials toward Soviet forces superior in numbers and quality to the American ones. The State Department, for example, has long opposed even proposing to the Soviets an equality in throw-weight of missile forces, on the assumption that the Soviet advantage is so overwhelming (the SS-18 force alone carries more megatonnage than the entire U.S. strategic force) that the Soviets would never agree to surrender it. In the interagency controversy over U.S. policy, the State Department's line, only partly tongue-in-cheek, has been in effect that "real men do not need throw-weight." This of course begs the question: What do we need? The only answer consistent with the State Department's position would be: If we have a small force able to deliver a few warheads to major Soviet cities, it would not matter how big, powerful or accurate Soviet forces were, because the deterrent effect would be the same.

This variant of Mutual Assured Destruction (MAD), which goes by the name "minimum deterrence," has been gaining inchoate acceptance in the Congress as weapon after American weapon has been delayed or canceled—in part because of hopes for arms control. As the SALT debate of 1979-1980 proved, neither the Congress nor American public opinion will accept MAD in any form when it is presented explicitly. Nonetheless, "minimum deterrence" survives as the theology of many.

An instructive example of this came in the testimony of a CIA official who in 1980 briefed the Senate about the newly discovered Soviet practice of reloading ICBM launchers. This practice had invalidated a basic premise underlying U.S. strategic planning and procurement for almost twenty years. Nevertheless, the official was nonchalant. What would be the implications of a possible doubling or tripling of the Soviet SS-18 force? There was no need for concern, he answered: the extra Soviet missiles could not be fired because, after an initial exchange, nothing could be fired. Only a little pressing elicited that neither he nor his Agency had really determined what would be required to prevent the Soviets from reloading their SS-18 launchers. Indeed, the facts show that we would be in no position to prevent it.

As far as the alleged irrelevance of all military assets after an initial nuclear exchange is concerned, it is noteworthy that the entire thrust of Soviet military strategy is to reduce the size, efficacy and significance of any American strike—to protect Soviet society and to win the war. The Soviets do not merely wish this: they also work at it. Hence, while the sizes and shapes of opposing nuclear arsenals seem to be of secondary importance to many American officials, for the Soviets they are clearly matters of life and death.

THE ARTIFICIAL WORLD OF SALT I

American advocates of arms control sought to create a situation unprecedented in history: two rivals for primacy in the world would agree for all time to stop trying to gain the edge over one another in the most important category of weapons, thus ending military history at the highest achieved level. Moreover, each would cede to the other in perpetuity the right to deliver nuclear weapons onto its soil and would refrain from efforts to protect itself. Thus, spurred by the fear of annihilation, both sides would enter into a kind of perpetual Hobbesian social contract. The Soviets did not seem enticed by this contract, but it was one of the prevalent assumptions in the 1960s that in time they would be "educated" by our negotiators to the realization that their own interests lay there as well.

Yet, from the very first the Soviets' refusal to see their own interests through the eyes of American arms control theorists led the U.S. Government to construct an elaborate, highly ambiguous intellectual framework—one which has given American arms control enthusiasts warrant to pursue their utopia with respect to U.S. forces, but within which the Soviets have continued to pursue the orthodox military goals of self-protection and victory in the event of a conflict.

From the outset Americans recognized that verifying and equality in missilery and restraint in research and development would require the presence of inspectors in production facilities and laboratories. But also from the outset the Soviets' clear refusal of such onsite inspection placed American arms controllers before a fateful choice: If arms control agreements constrained production and research, or the number of warheads or their accuracy, they would stand a chance of bringing about the desired arms stability in the world. But the agreements could not possibly be verified beyond the limited scope of technical means of detection, and thus could not be presented to American public opinion as prudent arrangements.

The answer to the dilemma was to construct agreements that could define the weapons and practices to be limited in terms that were more or less verifiable by technical means. The agreements could thus be sold to the U.S. public and the Congress, but—as it turned out—they were inherently weak agreements that failed to cover the significant parts of the strategic equation and whose real restraining power was questionable at best.

Thus, from the very first American arms controllers chose to negotiate treaties which were verifiable at least in part, and therefore ratifiable, but which were intellectual constructs well removed from reality. The SALT I Interim Agreement set limits on numbers of missile launchers because American satellites could take pictures of Soviet missile fields and submarines. Silos and tubes could be counted. The controversies of the 1970s over the Soviets' failure to dismantle older launchers as new ones were built and over their operational use of silos that were nominally for tests and command and control—straightforward issues of compliance—were basically unrelated to that decade's strategic revolution: the replacement by the Soviets of the SS-9 with the SS-18 in the "heavy launchers" and the replacement of the majority of single-warhead SS-11s with MIRVed SS-17s and SS-19s. The latter replacement was not a direct violation: rather, it stretched the definition of a "light" missile under the Agreement. In any event, these replacements precisely brought about the situation (a mounting Soviet threat to American strategic forces) which American negotiators had sought to

prevent by entering the talks in the first place.

There was little question within the American establishment about what was transpiring. Nevertheless, official anger was muted. After all, advances in technology sooner or later would have been able to turn even light missiles into multiple-killers like the SS-17, SS-18 and SS-19, but American arms controllers had simply assumed that the Soviets would not thus escalate the weapons competition. American officialdom has not yet mustered the humility to admit that it has been deceived—not because it was deceived primarily by the Soviets, but because it was deceived by its own fancies. Indeed, there is evidence that, on the eve of the signing of SALT I, Henry Kissinger learned about the development of the SS-19 but apparently did not deem the reported development significant enough to derail the process.

THE SALT II TRAIL

The negotiations for SALT II dragged on for six years largely because of American concerns over definitions. Having been "burned" in SALT I, American negotiators were now going to be more rigorous. As regards launchers, however, they could not be rigorous without declaring the treay unverifiable. In fact, if one defines a launcher merely as that which is necessary to launch a missile—and one acknowledges that ICBMs can be launched by very little equipment (Minuteman have been erected and launched by equipment carried on the back of a jeep)—one must admit that limits on launchers cannot be verified. Of course, because some kinds of launchers can be monitored, the tendency is to think of the "launcher problem" solely in terms of that small part of it that is controllable.

American negotiators in SALT II did insist on a complex definition of new missiles in order to prevent the wholesale substitution by the Soviets of a fifth generation of missiles for the fourth generation, even as the fourth had substituted for the third generation under SALT I. The four cornerstones of that definition are the requirements that a modified missile not exceed the original by more than 5 percent in launch-weight and throw-weight, that the number of warheads on any modified missiles not exceed the number on the original, that on any single-warhead missile the ratio of the weight of any warhead to the weight of the total reentry package not be inferior to 1 to 2, and that each side be allowed only one new missile.

Opponents of SALT II, including myself, pointed out that under this definition the Soviets could develop and deploy a generation of missiles that were new in every way but still not "new" in terms of SALT. The new missiles could be made of wholly new materials and according to wholly new designs. They could be vastly more reliable and accurate. They could thus pose wholly new military problems—all without ever violating the treaty in the slightest. Circumventions would be profitable and difficult to prove, especially if—as is now happening—Soviet missile tests are almost totally encrypted. Post-boost vehicles can be tested with fewer reentry vehicles than they can carry. Single-warhead missiles can be MIRVed, and the number of warheads carried by MIRVed missiles can be increased. thus, a new, more numerous, more powerful Soviet missile force can emerge more or less within the "constraints" of SALT II.

Our negotiators could have devised a tighter definition of newness. But that definition would have been unacceptable to the Soviets, or wholly unverifiable. They had to choose between reality and the SALT process.

LEGACIES OF THE ABM TREATY

Many consider the ABM Treaty of 1972 the jewel in the crown of arms control achievements. More than anything else it is supposed to symbolize the superpowers' mutual commitment to MAD. But the closer one looks at the Treaty's unrealistic requirements, the more one realizes that questions of the Soviets' compliance with them are of secondary importance.

A nationwide ABM system must be served by a nationwide network of battle-management radars. The Treaty allows such radars only at one ABM site in each country. The Soviets have built five huge radars that are inherently capable of performing that function. Are these radars intended to perform it? We will probably never have absolute proof short of their performance in actual battle.

The ABM Treaty forbids the rapid reload of ABM launchers at the one ABM site available. But when these launchers are underground, how does one know how rapidly they can be reloaded? given the range of modern ABM missiles and radars, how much of a country can a "site" protect?

The Treaty forbids the testing of mobile ABM systems. Yet, the components of the Soviets' fully tested ABMX-3 system—the Flat Twin radar and the SH-04 and the SH-08 missiles—are merely "transportable," not "mobile." The Treaty does not limit mass production or storage of these components. If they are ever deployed en masse after a sudden denunciation of the Treaty, the United States would have no legal complaint.

The Treaty forbids testing—much less using—air defense systems "in an ABM mode." Yet, advancing technology has deprived that concept of whatever meaning it may once have had. Today the technology available for the American Patriot and Soviet SA-12 air-defense systems allows them to be used both against aircraft and against reentry vehicles. Still, the ABM Treaty is not being violated so much as it is being left behind by evolving reality.

Perhaps the best example of the ABM Treaty's decreasing relevance is the controversy surrounding the question of whether it would permit or prohibit space-based anti-ballistic missile lasers. Many American champions of arms control aver that Article I of the Treaty prohibits all anti-ballistic missile systems forever, except for the two ground-based sites specifically allowed. The Treaty deals with ABM launchers, missiles and radars because at the time it was drafted no other means for anti-missile defense were known. Some argue that the Treaty was meant automatically to ban any other devices which might be invented, so long as they were capable of destroying ballistic missiles, but of course the Treaty says no such thing, and in fact it is an axiom of international law that nations are bound only by the commitments they specifically undertake.

The ABM Treaty does not mention lasers at all: indeed, it could hardly have done so in 1972, when laser technology was in its infancy. The only possible reference to lasers is in Agreed Interpretation "D," which states that in the event components based on "other physical principles" and capable of substituting for ABM launchers, missiles and radars "are created,' the two parties would discuss how they might be limited. That is to say, the two parties would develop definitions.

A moment's reflection is enough to realize that, in the case of space lasers, to distill reality into legal terms verifiable by national technical means would be much more difficult than it has been in the case of ballistic missiles. Unlike missiles, the characteristics which make lasers fit or unfit for strategic warfare are not discernible through mere observation. Observation will yield information on gross size, power plant and, possibly, wavelength. But the laser's power, the quality of its beam, its pointing accuracy, its jitter, the time it needs to retarget and the number of times it can fire can be learned only from direct access to test data.

Hence, once again we see a demonstration of the folly, and dangers, of approaching a strategic question with the mind-cast of arms control. Suppose for a moment that the Soviet Union placed a number of laser weapons in orbit. Discussion of the strategic significance of this event would instantly be distracted by questions of whether a violation of the ABM Treaty had occurred. But on what basis could the Soviet Union be accused of having violated the Treaty? There could be little in the way of determining—much less hard proof—that the lasers' mission was ballistic missile defense. Yet, against this background of legal murkiness and ominous strategic implications, many devotees of arms control, while they question the efficacy of American lasers against ballistic missiles, still object to placing such lasers in orbit, on the grounds that doing so would violate the ABM Treaty. When will they learn that unilateralism is not the road to arms control, let alone to national security?

In short, the difficulty of reducing the reality of modern weapons to legal terms, the pressures on American negotiators to make those terms both negotiable and arguably verifiable, and the political impediments to deciding that any given Soviet activity warrants abandoning a fundamental foreign policy—all these have produced an intellectual tangle of our own making, within which we thrash about even as the Soviets widen their margin of military superiority. Since the question of Soviet violations of arms control treaties refers to a framework removed from reality, dwelling on the question is only to compound the unreality.

THE POLITICAL PREDICAMENT

The issue of past Soviet violations played a minor role in the SALT debate of 1979-1980. To be sure, the earlier debate did turn on the right question: Has arms control with the Soviet Union enhanced our security in the past, and can it be expected to do so in the future?

The proponents of SALT II conceded that the United States' strategic position in relation to that of the Soviet Union had deteriorated, and that mistakes had been made in the conception SALT I and in the management of U.S. forces under it. But they argued that SALT II was necessary to keep U.S.—Soviet relations headed in the direction of peace. When confronted with criticism of specific provisions of the treaty, they often conceded the treaty's weaknesses, but argued that only ratification would make possible the continuation of negotiations, wherein lay the ultimate solution to those weaknesses. The U.S. Senate rejected these arguments, and in the election of 1980 the American people clearly rebuffed SALT.

Nevertheless, an army of bureaucrats simply could not recast their thinking

beyond a framework within which they had operated so long. Since 1980, however, the principal argument in favor of arms control has been quite different from previous ones. It reads basically as follows: However harmful arms control might have been in the past, however unlikely might be Soviet acceptance of anything which enhances the West's security, nevertheless we must pursue the arms control process in order to convince our own fellow citizens that we are not warmongers but peace-loving people. When the question is raised why we should pursue negotiations with an adversary who by one means or another, has used them as a screen for overturning the strategic balance and is apt to use further negotiations for the same purpose, the general answer is that we, too, must practice cynicism. We, too, must negotiate in order to legitimize our own military buildup.

This argument ignores the fact that in a democracy public opinion cannot support self-contradictory policies. If the U.S. Government declares that the Soviet leaders are the sort of people from whom one can reasonably expect a fair deal on arms control—and that arms control is so important that it is essential that a deal be reached—then public opinion will reasonably blame the Government for doing anything which seems to put obstacles in the way of agreements. The Soviets, having received from the U.S. Government the credentials of men of goodwill, will persuasively point to our military programs and our own proposals as obstacles.

On the other hand, when our Government replies with figures showing how the Soviets have seized military advantages—along with suggestions that the Soviets might have circumvented or violated treaties—public opinion rightly questions the Government's motives. If the Soviets really had tipped the strategic balance using arms control as a screen—if there were reasonable evidence that they regarded arms control far differently than we, and circumvented or violated whenever they could—why would we be negotiating with them at all? To evade such questions is to be too clever by half.

Some American officials regard the publication of evidence regarding the Soviet Union's violation of the Biological Warfare Convention and other arms control treaties as embarrassments to their own policy preferences rather than as occasions for reexamining their own approach to arms control. Deputy Secretary of State Lawrence Eagleburger recently declared that, in light of all that happened, it is clear we must "do a better job" of arms control. But what can he mean by "a better job?" Can anyone really believe that there exists a formula which, if discovered and presented to the Soviets, would lead them to agree to unmake the military gains they achieved as a result of their strategic buildup? Does a set of words exist which would induce them no longer to regard arms control as a means of thwarting our countermoves to their strategic programs? I doubt it.

The proposition that it is possible to do "a better job" deserves a definitive test. President Reagan's Director of the Arms Control and Disarmament Agency, Kenneth Adelman, has expressed the view that the foremost criterion by which arms control proposals should be judged is their effect on national security. Only proposals that meet this criterion warrant examination from the standpoint of verifiability and acceptability to the Soviets. This sensible approach would draw the dialogue on arms control closer to the real world and help remove the blinders that have prevented us from seeing it.

Mr. SYMMS. Mr. President, this excellent article was authored by our distinguished colleague, Senator MALCOLM WALLOP, and it deserves attention by all Senators. Senator WALLOP has critically analyzed a recent colloquy over Soviet SALT violations by two other distinguished colleagues, Senators BIDEN and MCCLURE. Senator WALLOP's main point is that disputes over the evidence and legalities of Soviet SALT violations are much less important than facing up to the severe lack of U.S. defenses against Soviet missile attack. While I strongly agree with Senator WALLOP's point that ABM defense of America is crucial, I think along with Senator MCCLURE that Soviet SALT violations are irrelevant. Senator MCCLURE and I both believe that resolving disputes over Soviet SALT violations are extremely important to U.S. foreign and defense policy. However, Senator WALLOP has made a thoughtful presentation that we should all carefully consider.

PRISONERS AND DRUGS

Mrs. HAWKINS. Mr. President, I would like to share with my colleagues the shocking findings of the most recent Department of Justice survey of inmates of State correctional facilities. It revealed that almost a third of all State prisoners in 1979 were under the influence of an illegal drug when they committed the crimes for which they were incarcerated. More than half had taken drugs during the month just prior to the crime. More than three-fourths had used drugs at least some time during their lives, but only one-fourth of the drug users had ever been in a drug treatment program.

DRUG USE

Marihuana was by far the drug most commonly used by the inmates. Three-quarters had used it at some time in their lives, roughly the same proportion as had used any illegal drugs. Therefore, almost all inmates who had used other drugs had also used marihuana.

Drug experts find this to be a characteristic of the general population as well; the total number of drug users is only slightly larger than the total number of marihuana users.

INMATES AND OTHERS

Inmates who were about twice as likely as the public at large to have used drugs. Nonetheless, the proportion who had used marihuana was the same as both groups—one-fifth. Consequently, persons who had used only marihuana accounted for half of all the drug users in the general population but only one-fourth of all the inmate users.

For all other drugs, use by the general population was substantially below that of the inmates. The greatest difference was for heroin, used by only 2 percent of the public at large but by one-third of the inmates. Aside from marihuana, the most popular drugs among the general population were cocaine and hallucinogens, each used by 1 of every 7 people.

Recent drug use for the general population was also substantially lower than for the inmates. Almost three-fourths of the inmate drug users had used drugs recently compared to only one-half the drug users in the general population. In the public at large, almost all recent drug users had used marihuana. One-fifth had used cocaine, and one-tenth, hallucinogens. Use of the other drugs was minor, involving 1 percent or less of the population.

DRUG TRENDS

Drug experts generally agree that there are popular trends in drug use. A drug quite popular at one time may be less so at another. For example, it is generally acknowledged that cocaine—the most expensive of all drugs—is growing in popularity while there are some signs that use of hallucinogens may be on the decline. Consequently, current profiles of lifetime drug use may vary somewhat from those that existed for prison inmates and the general population at the time they were surveyed.

LIFETIME DRUG USE

Lifetime drug use is a constant for an individual once he has become a drug user. For example, a person who first uses heroin at the age of 20 will be "a person who has used heroin" for the rest of his life regardless of whether he ever uses it again. It is also true that the older a person becomes without using illegal drugs, the less likely he is to start.

YOUNG USERS

When only the 18- to 25-year-olds are considered, the difference in lifetime use for prison inmates and the general population is diminished, although the inmates still had had a higher rate of use for every drug than did young people in general. The proportional difference is the least for marihuana, which had been used by seven of every eight inmates and two of every three noninmates.

For 18- to 25-year-olds, the difference between inmates and others in recent drug use are proportionately greater than the differences in lifetime drug use, the same relationship that held when all ages were considered. Again, drug use by young inmates exceeded that of young people in general for every substance and again the proportional difference was least for marihuana.

USER OFFENSES

As expected, inmates in prison for crimes involving drugs were more

likely than other inmates to have used drugs. Nine-tenths had lifetime drug use and three-fourths had used drugs recently. Inmates convicted of drug offenses were nearly twice as likely as other inmates to have used heroin and more than twice as likely to have used it recently. Their lifetime and recent use of cocaine were both twice the rate for other inmates.

About three-fifths of the drug users with drug offenses were in prison for trafficking rather than possession or use. This was true for all drug users, recent drug users, and even those who were under the influence of drugs at the time of their crime.

DRUGS AND CRIME

About a third of all inmates said that they were under the influence of drugs at the time of their offense. About half of these were under the influence of marihuana.

Half of all drug offenses were committed under the influence of drugs—a fifth under the influence of heroin. A fourth of all burglaries and roughly a fifth each of all robberies and all drug offenses were committed under the influence of marihuana. One-eighth of all robberies and one-tenth of all larcenies were committed under the influence of heroin. Cocaine did not play a significant role in the commission of any crimes.

CRIMINAL HISTORIES

The more convictions inmates had on their records, the more likely they were to have taken drugs during the month prior to their crimes compared to just over two-fifths of those with no prior convictions. The recent use of heroin was also related to prior convictions. The proportion of inmates with five or more prior convictions who had used heroin in the month before their offense was three times greater than the corresponding proportion for those with no prior convictions.

The likelihood of having used more than one type of drug was also related to the number of prior convictions. One-sixth of the inmates with no priors had used five or more different substances; two-fifths of the inmates with five or more priors had used that many.

DRUGS AND ALCOHOL

It appears that illegal drug use is about as persuasive among inmates as alcohol. Precise comparisons, however, are not possible. For example, 22 percent of the inmate population had never used drugs, whereas 17 percent of the inmate population had not used alcohol in the previous year.

Half the inmate population had been drug users daily at some point in their lives and two-fifths had recently used drugs daily. Most of this daily use involved marihuana. Less than one-fifth had ever used heroin on a daily basis and about one-tenth had used cocaine daily. In comparison, a third of the inmates drank daily during the year before their offense and two-thirds of those drank very heavily.

I ask unanimous consent that a May 5, 1983, Washington Post artictle by Joe Pichirallo entitled "D.C. Jail Physician Says Most Prisoners Were Drug Users" be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, May 5,1983]

D.C. JAIL PHYSICIAN SAYS MOST PRISONERS WERE DRUG USERS

(By Joe Pichirallo)

The chief physician for the D.C. Department of Corrections said yesterday that 70 to 76 percent of the prisoners that enter the District's jail are either on drugs at the time of their arrest and incarceration or have used them recently.

Dr. Robert E. Lee told the City Council's judiciary committee that his estimate is based on interviews and physical examinations conducted by jail officials within hours after prisoners are taken into custody.

The most common drugs used are heroin or heroin substitutes, Lee said in an interview after the hearing. He said jail officials move immediately to detoxify heroin addicts and, in many cases, to administer methadone to them, usually for no more than 21 days. "We are not judge and jury," Lee said, "We treat them humanely."

Most of the nearly 2,200 prisoners at the D.C. Jail in Southeast Washington are awaiting trial. Lee said that the jail is the only corrections facility where methadone is administered, and addicted prisoners at Lorton, the D.C. prison facility in Fairfax County, are sent back to the jail for methadone treatments if their drug use was not previously detected.

Lee said that while the precise number of drug users coming into the jail fluctuates, he estimates that it has never been lower than 65 percent in the dozen years he has been with the department.

Lee was one of about a dozen top department officials appearing before the judiciary committee yesterday to discuss the operation of the city's prison facilities. In addition to drugs, the officials discussed such issues as overcrowding, expansion plans and their efforts to provide better security.

Corrections Director James F. Palmer urged council members to support his request for higher starting salaries for guards as a way to upgrade the department's security force.

Palmer said that the key to better security is a high-caliber, well-trained corrections staff. He said he wants training programs and salaries to be more in line with those of the police department.

Police Chief Maurice Turner has already agreed to have joint training programs for police and corrections officers, Palmer said.

But the department will continue to lose corrections officers to the police department if starting salaries are not raised, Palmer added. According to the D.C. personnel office, the starting pay for police officers is $18,551 annually, nearly $4,000 more than the $14,783 a year entry-level salary for corrections officers. Palmer said he would like to see the starting salary for corrections officers raised to the next pay level, which is $16,425 a year.

Mr. DIXON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Assistant Secretary of the Senate proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION OF ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that the time for the transaction of routine morning business be extended until 11 a.m. under the same terms and conditions.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Assistant Secretary of the Senate proceeded to call the roll.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. RUDMAN). Without objection, it is so ordered.

HAPPY BIRTHDAY, SENATOR STENNIS

Mr. COCHRAN. Mr. President, I rise this morning to extend my congratulations and most sincere best wishes to my good friend and distinguished colleague, JOHN STENNIS, on this his 82d birthday.

It has been my pleasure and honor to serve as a Member of our State's congressional delegation with Senator STENNIS since January of 1973. During these 10 years, I have come to know him as one of the most courteous and thoughtful gentlemen in the entire Congress. It is really a source of pride for everyone in our State to look back upon his great career here in the Senate.

For those of us who have had the great privilege to work with him in behalf of the interests of our State and Nation, it has been a very pleasurable experience to observe him day by day carrying out the important duties of the office that he holds.

I must say, Mr. President, that one of the traits that I have come to appreciate as much as any other of Senator STENNIS is the fact that he always has something very complimentary to say of every Member of this body. I have never heard him utter a single word of criticism personally against any Member. I think it is because he truly enjoys his relationship with his fellow Senators and genuinely likes each Member of this body.

I suppose in this modern day and age it is not unusual for persons to enjoy productive life well into their eighties and nineties. But in Senator STENNIS' case I think what is unusual

is the quality of his career and his life here in the U.S. Senate because he has served with such great distinction and has reflected such credit on this institution and on the people of the State of Mississippi who have for so many years supported him and returned him to this place of responsibility.

So this is a special day for him and it gives me pleasure to be able to call to the attention of the Senate the fact that this is his 82d birthday and to wish for him much happiness on this day and much pleasure in the many years which I hope remain in his brilliant career.

Mr. BYRD. Will the distinguished Senator yield?

Mr. COCHRAN. I am happy to yield to the distinguished minority leader.

Mr. BYRD. Mr. President, I am glad that the distinguished junior Senator from Mississippi has brought to the attention of his colleagues the 82d birthday of our esteemed colleague, Senator STENNIS.

I have served in this body for 25 years with Senator STENNIS. I once served on the Armed Services Committee with him. I have served on the Appropriations Committee with him for going on 25 years.

He is a remarkable man, a remarkable Senator. I many times say he is a man who looks like a Senator, who acts like a Senator, and who talks like a Senator should. I believe that. He has been an inspiration to me over these years. He is highly regarded and highly respected by Members on both sides of the aisle. He showed remarkable resilience to a vicious thing that happened some years ago when he was shot here in Washington.

He has a keen mind and his physical strengths seem to endure, endure, and endure. We are all very fond of Senator STENNIS. I know that we all join in wishing him many happy returns for the day.

I am trying to recall a little line that might well close out my thoughts of Senator STENNIS in this colloquy.

The hours are like a string of pearls,
  The days like diamonds rare,
The moments are the threads of gold,
  That binds them for our wear,
So may the years that come to you
  Such wealth and good contain
That every moment, hour, and day
  Be like a golden chain.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I would like to join in wishing our colleague, Senator STENNIS, the happiest of birthdays as he celebrates his 82d birthday. I think in many ways he is really the personification of what I learned about the Senate when I was in school. That is that the Senate was a body of dignified deliberative minds seeking the best welfare of the Nation. I think Senator STENNIS certainly embodies that. He is the dean of the Appropriation Committee, and we all learn a great deal from him. His institutional memory, his gift for an apropos story, are treasures for all of us.

I have had many experiences with him, sharing in that great trauma of the attack made against him. I marvel at the strength of his body and his mind. I remember when he carried the cause of justice on this floor in a very difficult matter which involved the disciplining of one of our colleagues.

I said then if I ever found myself having to stand before a court of justice, I would like to have Senator STENNIS as the judge, because I thought out of his mind would come nothing but justice.

Oftentimes we talk about the Senate being constituted by 100 Members. Mr. President, let me say as we celebrate this 82d birthday of Senator STENNIS, let us be mindful the Senate is made up of many hundreds of people—our staffs, the clerks, parliamentarians, policemen, all of these people are part of the institution of the Senate.

As an example, as representative of that other part of the Senate, I have a young staff man, Jim Hemphill, of Pennsylvania, who is celebrating his 30th birthday today, 52 years younger than Senator STENNIS. He came to my office as a young intern when he was attending Georgetown University, majoring in political science. He has served me for 10 years and is reaching that ripe age of 30 years.

I stand here not only to wish Senator STENNIS a happy birthday, but also to mention those of our staff and honor them by wishing Jim Hemphill, of my staff, a happy birthday as well.

Mr. DOLE. Mr. President, I want to join in the statements which have been made. I remember when I succeeded Senator Carlson who served in this body with the distinguished minority leader, who was a friend of everyone in the Senate. He said:

I am not going to give you advice but just keep your eye on John Stennis and Jennings Randolph and you will not get into too much trouble.

He had great respect for every other Senator but he happened to know these two colleagues over many years. That was good advice and I have tried to follow it most of the time.

I certainly want to join in the statements made by the Senator from Mississippi, the Senator from West Virginia, the Senator from Oregon and others on wishing Senator STENNIS a happy birthday.

Mr. BYRD. Will the Senator yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. I can see that former Senator saying just that. I would bet if he had been talking with me on that occasion, he would have said, "Also keep your eyes on that Senator from Kansas, Mr. DOLE."

Mr. DOLE. I appreciate that, Mr. President.

Mr. SASSER. Mr. President, I rise today to commend my distinguished colleague from Mississippi, Senator STENNIS, on the occasion of his 82d birthday.

Senator STENNIS was elected to the U.S. Senate after a distinguished career in Mississippi as a district prosecuting attorney and circuit judge. He is a graduate of Mississippi State University and Virginia Law School, one of the finest law schools in the country.

He has served in the Senate during some of the most significant times in our history, much of it as chairman of the Senate Committee on Armed Services. His has been a wise voice as we have sought to maintain our defense readiness in a changing and often dangerous post-war world.

Mr. President, we use the term loosely around here "The gentleman" from this or that State. However, I think my colleagues would all agree that the distinguished senior Senator from Mississippi deserves that title. Despite the frenzy and chaos in which the Senate sometimes operates, the Senator remains unfailingly courteous to and considerate of his colleagues on both sides of the aisle and the staff of this body.

During my time in the Senate, I have found his counsel of inestimable value as we deal with issues before us. I value his advice and I value his friendship and I join with my colleagues in wishing him well on this occasion and for the future.

Mr. MATTINGLY. Mr. President, I want to join with my colleagues in wishing the senior Senator from Mississippi a happy birthday. One of the privileges and pleasures of my 2½ years in the Senate has been serving with Senator STENNIS on the Appropriations Committee. He is a southern gentleman in every sense of the term. No matter how hectic the meeting, and if you have ever looked in on the Appropriations Committee you know how hectic that can be, Senator STENNIS manages to calmly take care of the people's business while remaining polite and courteous to one and all. From Senator to staff member, he has a kind remark and friendly greeting for everyone.

The senior Senator from Mississippi sets an example for us all. He is a "Senator's Senator." He has an unequaled reputation for fairness and integrity. If he tells you something, you can count on it.

Many of us call the senior Senator from Mississippi "Mr. Chairman" because of his distinguished career as chairman of the Armed Services Committee. It is a sign of respect and a clear demonstration that the influence of this fine man is not limited to offi-

cial titles. He is a powerful force in this Senate because of the respect and love we have for him. That will never change.

STOP THE BUDGET SHELL GAME

Mr. DOLE. Mr. President, the time is fast approaching when we will have to decide whether this Congress is a serious deliberative body, or not. A legislature that cannot mobilize itself to deal with the most serious domestic concern facing the Nation cannot be taken seriously. That concern—the fate of the economic recovery as it is linked with the huge budget deficits projected for the years ahead—ought to be at the heart of our legislative agenda. Instead it is a sort of a sideshow, an issue Members visit from time to time for the rhetorical opportunities it provides, but which no one is prepared to focus on in a substantive way. Increasingly, it seems we are drifting into sort of an aimless stupor when it comes to economic policy. If that continued we may have a very rude awakening indeed.

THE TIME ELEMENT

The budget deficit program has not escaped the attention of the news media. But we hear conflicting reports, and that adds to the confusion. This or that economic expert is cited as saying that the recovery is on track, and the deficit will not be a real problem for a couple of years. Others say it is a problem now, and has to be tackled now. Last week Fed Chairman Paul Volcker testified that the strength of the economic recovery might pose a threat of crowding out or higher interest rates sooner than was expected. In other words, the deficit might be a current problem for the recovery as early as 1984, rather than 1985 or 1986.

It is difficult to know which scenario will in fact develop. But it is wrong to assume that our policy choice ought to be guided by differing estimates of the date at which the deficit will become a serious problem. There is virtually no dispute that the deficit does threaten recovery, because it will either drive interest rates back up or lead to renewed inflation. If we agree that the problem is that serious—and that present uncertainty about how Congress and the President will react to the problem already drives up rates—then we must also agree that the time to act is now. Not 1984, not after the next Presidential election—but now.

Delay means no real action until late 1984, and I suggest it really probably means late 1985 before Congress and the administration, whether it is this administration or another administration, really focuses on the deficits. That may be too late.

DANGER SIGNS

Mr. President, if anyone doubts that we are already running into problems because of the deficit, just look at the trends over the past 3 months. Amid the many favorable—and welcome—reports of higher industrial production, rising consumer confidence, and improvements in the employment picture, some danger signs are creeping into the picture. Interest rates are the most obvious example. In May, 91-day Treasury bills were offering a rate of 8.04 percent. Now they are at 9.36 percent. Six-month bills are up about 1½ points since May: So are long-term Treasury bills, and, more important for the home buyer, mortgage rates. The stock market, while continuing to be generally healthy, shows signs of uncertainty, stalling, and possibly a significant correction in the offing. Bond prices are generally lower as a result of concerns of what Congress and the Federal Reserve may—or may not—do about the economy. Meanwhile the dollar has reached new record highs in exchange markets—a sign that foreign investment is increasingly attracted by our high interest.

Higher interest rates slow investment and growth. Investors who can get a high return on Government securities have little incentive to invest in new production. An excessively high dollar exacerbates our balance-of-trade problems, and leads to increasing tension over the major trade negotiations that are going on right now and growing clamor for steps to protect our domestic markets—and thus a threat to long-term growth through expanded trade. All this translates into fewer jobs and the specter of economic stagnation—the bane of the 1970's that we pledged to eradicate.

RESPONSE TO DATE

Mr. President, our response to date to this problem—or rather to this array of problems posed by the deficit—needs to be examined. It is not a good record, and it demonstrates why we must break out of inertia that grips us.

We have adopted a budget. But that budget would have no great impact on the deficit even if fully implemented, and there is little prospect that it will be. Reconciled spending reductions in the 1984 budget are just $2.8 billion in 1984 and $12.3 billion over 3 years. This, at a time when spending is running at a record 25 percent of GNP. Reconciled revenues are proposed at $73 billion over 3 years, bringing 88 percent of the reconcilation instruction into the jurisdiction of the Finance Committee. But apart from reconciliation, the net effect of the budget in fiscal year 1984 is to increase nondefense spending by $1 billion. Even worse, the so-called reserve fund authorizes substantial new nondefense spending while pretending it will not affect the deficit. Counting the reserve fund, spending would increase by about $10 billion in 1984. Only $4.4 billion of the deficit reduction proposed for 1986 is in nondefense spending cuts—the rest is a $46 billion tax increase and $15 less in defense.

But the lack of teeth in this budget is only one symptom of a disease that is spreading in Congress: It is called business as usual. The temptation to accommodate constituent demands and special interest pressures once again seems to be overwhelming. The spirit of firmness and discipline to protect the public interest—which were demonstrated at least to some degree in both 1981 and 1982—seem to have vanished. Instead we have passed a so-called jobs bill that divvies up $4.6 billion, largely for pork-oriented projects that will have little impact on alleviating recessionary unemployment. We allowed in the budget for another $2.1 billion for physcial infrastrucure programs, and $8 billion over 3 years for a phase 2 jobs bill. We all want to create jobs, but jeopardizing recovery to generate make-work jobs that politicians can take credit for is by any standard a job-destroying policy.

And there is more in the pipeline. We hear the clamor for more subsidies for homebuyers, more money for revenue sharing, more aid to distressed industries via an industrial policy—a poor term to describe proposals to legislate even more impediments to economic growth in the form of government-determined allocation of resources. More for education, more for transit, more aid for the States. Everyone is pushing, and Congress seems ready to yield.

Look at agriculture as an example. As my colleagues well know, I have advocated freezing target prices as a way to control program costs, parry criticism of basic and vital farm programs, and reduce the deficit. But my colleagues who are from farm States—like myself—appear unwilling to allow even that to be considered. I respect their views, but I must say that their view is shortsighted, and puts at risk public support for agricultural subsidies in general. The PIK program and the $21 billion price tag for this year's farm package have not gone unnoticed in the news media. Farm exports are too important to our economy as a whole for us to put Federal agricultural policy at risk because of insensitivity to the role farm program excesses play in adding to the severe deficit problem.

Mr. President, there are just too many cases where Congress has refused to control program costs or act responsibly when costs deviate to an astronomical degree from our original assumptions. Medicare is a case in point. We are going to have to save it in the near future, just as we saved social security, because we let its costs get out of control relative to our ability to provide financing. This is not a budget mandate, it is a simple reality

forced by skyrocketing medical costs and basic flaws in program structure.

In fiscal year 1975, medicare cost $18.9 billion. In just 7 years, that cost has tripled to $56 billion, and it is projected to rise to $81 billion, another 44 percent increase, by 1986. The link between our lack of control over medicare and health care costs that far outstrip the general inflation rate needs to be examined, but this is just another instance of how Congress puts spending on automatic pilot—a disservice both to beneficiaries who learn to rely on programs and to the average taxpayer who foots the bill, either through taxes, inflation, or higher interest costs.

BASE TO BUILD ON

These horror stories vividly demonstrate what is wrong. But lest we conclude that there is nothing to be done, we ought to consider the firm foundation that has been established in the economy, and which we can and must build on. Inflation is way down—running at about 2½ percent in the 12 months ending in June, the lowest in 15 years. Even with the upward blips, interest rates are far below the record highs of the Carter years. Employment is rising, the auto industry is recovering, housing starts are up, and the faster growth pace will help offset some of the deficit. We have a strong recovery underway. The goal is to sustain it—by not allowing inaction on the deficit to impede further progress, or even wipe out the progress we have made.

Stable growth without inflation is the path we have been seeking to return to for nearly the past 2 decades. We have a chance now, and the voters will not forgive us—any of us—if we throw that chance away.

WHAT IS TO BE DONE

Mr. President, the question is not when to act. The time is now. Anyone who believes the economy is going to keep marching ahead with these huge deficits in tow is living in a dream world. Our job is not to order the recovery, but to stand out of the way and let it proceed. It will not unless we act.

And let me say that, while I appreciate the concern shown by our Governors last weekend over the deficit problem, in many ways their deliberations are a perfect illustration of the problem we face. The deficit is a problem, they said—the States need more money. You the Federal Government ought to raise taxes—we need the money.

We will have to raise taxes to bring the deficit to acceptable levels. But we will have to cut spending first, perhaps including spending that affects our friends, the Governors of the 50 States. Everyone is willing for the other guy to sacrifice. We need to pinch ourselves a little too, if we have any hope of getting the job done. I hope the Governors will join us in the effort to put together a spending and revenue package that can receive immediate action by the Congress.

Because that is just the kind of leadership we need. Our leaders, from the President and the Congress to our State and local officials and business and civic leaders, need to pull together in order to safeguard the domestic economy. There is no point in assigning blame, because no one is free of it. Just as Congress must put spending in order, the President must make clear his priorities on the budget, and tell us what he expects us to do about the deficit. We need his leadership and his approval, because we know he can get the job done. He has done it before: All he needs is a clear sense of purpose. We must be willing to help him clear the air, if there is any doubt about the challenge we face.

I have said several times that we need an exercise in domestic summetry to eliminate the real risk to long-term recovery. Unless everyone comes together and is willing to lead the public, we will be reduced to following the trend, be it good or bad. We cannot allow progress toward recovery to lull us into acquiescence in whatever happens.

The summit concept will have to begin with the President and with the Congress, but it should not stop there. All decisionmakers in our economy, including business and labor, have a vital stake in what happens. We cannot please everybody, but only if we agree on the absolute priority of cutting the deficit in a way that advances our shared economic goals will we have a fighting chance to succeed. We cannot tax our way out of recession, and we cannot devastate the social and benefit programs that so many Americans depend on. But we can make adjustments on both sides of the ledger that boost the odds in our favor.

The August recess is the perfect time to tackle the risk of renewed recession. We need to sit down and begin working out, at least at the staff level, the outlines of the kind of deficit reduction package that can have a real impact. We need to start the effort to explain to the public what the stakes are, and to build a consensus on the kinds of tough action that are needed to protect the recovery. If we do not, the public will remember our failure, and no one will escape blame. We have built public support for controversial actions on a number of occasions in recent years, even with an election impending. The leadership of President Reagan has often been the key. We need him to set the course now, because the job is doable and it has to be done. With a national accord on deficit reduction, we can take the partisan edge off the economic issue and make real progress for all Americans. This is one summit that must be reached.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TIME TO TURN UP THE "VOICE"

Mr. SYMMS. Mr. President, in the continuing battle of ideas between the United States and the Soviet Union, our most effective weapon is truth. And one of the most effective ways to spread that truth has been through the Voice of America. An estimated 100 million listeners worldwide rely on the VOA for information.

Unfortunately, the Voice is muted not only by the Communists' constant attempts to jam its broadcasts, but by the deterioration, obsolescence, and inadequacy of its own equipment.

More than 90 percent of the VOA's transmitters are at least 15 years old; and while the VOA has only 6 500-watt superpower transmitters, the Soviet Union has 37. Currently, the VOA is on the air less than half as many hours as Radio Moscow and it broadcasts in barely half as many languages.

Expansion and modernization of the Voice of America is vital if America is to compete effectively with the Soviets in the battle for men's minds. The House of Representatives has approved a budget which will permit the VOA to carry out its mission. But unfortunately the funds that are necessary for the modernization of VOA have been slashed by the Senate Foreign Relations Committee.

I urge my colleagues to restore adequate funding for the VOA when the measure reaches the Senate floor. And I hope they will read an article, which I ask unanimous consent to have printed in the RECORD, by Charles P. Freund, published by the Heritage Foundation, for more detailed information on this important subject.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

TIME TO TURN UP THE VOICE OF AMERICA

The Voice of America recently received a letter from a frustrated listener in Ghana, who asked, "Sometimes, listening to the news, the signal disappears altogether. Have your transmitters started to wear out?"

The answer, regrettably, is yes—and it is not only VOA's transmitters that are wearing out. Yet in the competition of ideas with the communist world, the West's most direct and often most effective tool is international radio. The impact of such broadcasts as the Voice of America can be meas-

ured not only by the communists' continuous and costly efforts to jam them, but also by official reactions to the broadcasts. Only recently, the Polish regime filed a protest with the U.S. claiming that VOA broadcasts have served to "destabilize" that regime by encouraging "destructive elements working within Poland's constitutional order." In other words, the Voice is a continuing source of information, if not inspiration, to Polish listeners.

Ironically, this protest was filed the same week that funds to modernize the seriously understaffed and technically deteriorating Voice were effectively slashed from the budget by the Senate Foreign Relations Committee. The House of Representatives already had approved the 1984 budget request of the U.S. Information Agency, of which VOA is a part, which would allow the Voice to begin implementing modernization. The Senate Foreign Relations Committee, however, cut the total budgetary request of $701 million by $65 million and shifted $64 million from Administration requests. Without restoration of these funds, VOA modernization will have to be scrapped. Thus, just when the U.S. must be better prepared to join in the competition of ideas, the Voice is being allowed to deteriorate.

VOA's broadcasting and transmitting equipment is aging and, in many cases, is obsolete. Its technical staff woefully lacks qualified engineers. The news and editorial staff is seriously shorthanded. Neither the number of hours broadcast per week, nor the number of languages broadcast, adequately reflect the position of the United States, nor do they adequately serve the estimated 100 million listeners world wide who regularly turn to VOA for its news reports and its mix of informational and cultural program. The proposed VOA modernization plan addresses these shortcomings.

Of 107 VOA transmitters, more than 90 percent are 15 or more years old; more than one-third are twice that age. Some transmitters broadcasting to Eastern Europe and the Soviet Union actually date from World War II. VOA has only six 500-kilowatt superpower transmitters, all of them patched together from smaller units. The U.K. has eight such transmitters, West Germany nine, France eleven. The Soviet Union, the most prevalent voice on the international dial, has 37.

• VOA's equipment is so old that its technicians constantly have to cope with burned-out generators and antennae that will not transmit a full signal. Spare parts for some equipment are no longer available; VOA must manufacture them. Even VOA's headquarters studios in Washington are antiquated and under increasing strain, as the Voice struggles to increase its number of hours of weekly broadcasts. These facilities regularly shock visiting foreign broadcasters, some of whom recently termed them "the world's most backward equipment."

VOA is currently on the air 956 hours per week, less than half of Radio Moscow's 2,158, less than either Taiwan or the People's Republic of China, and barely more than West Germany, Egypt, or the U.K. VOA is fifth in number of hours broadcast to Africa, sixth to the Caribbean, Eastern Europe, and East Asia, and tenth to Western Europe.

VOA currently broadcasts in 42 languages, compared to the USSR's 82, Peking's 43, and Egypt's 30. In the Middle East alone, VOA broadcasts in eight languages, the USSR in 20. When the USSR marched into Afghanistan, VOA had no one on its staff able to speak the official Pashto language. For every hour VOA broadcasts in that tongue, the USSR offers five. Of the 42 language services, 38 are understaffed. There is no correspondent in Pakistan to cover events in Afghanistan, nor a correspondent in Geneva to cover arms control matters.

VOA's modernization plan would replace the old equipment, strengthen the signal, fill 140 engineering positions and 141 language service positions (including a 25 percent increase in the Polish and Baltic staffs), and create 68 percent increase in the Polish and Baltic staffs), and create 68 new positions to improve the quality of VOA news, features, and other programs. Construction of new transmitting sites would begin and the antiquated distribution system would be computerized.

VOA modernization is essential. As matters now stand, the Soviets spend more to jam Western broadcasts than the U.S. spends to reach the entire world. The battle for the loyalty of the uncommitted, as well as the necessity of giving information to those in closed societies, requires that the Voice of America be given high priority in the allocation of federal resources.

Mr. SYMMS. Mr. President, it has always baffled me that the Communists have to build walls to keep people in and the United States has to build walls to keep people out, but we are constantly losing the propaganda war for the battle of uncommitted minds in the world. I think this is one way where we might start telling the American story to those millions of uncommitted people in the world who would like to know that there is a humanitarian opportunity for all people if they could live a life in freedom and liberty and opportunity that we so very much enjoy in this country.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MATTINGLY). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

DEPARTMENT OF THE INTERIOR APPROPRIATIONS, 1984

The PRESIDING OFFICER. The Senate will resume consideration of the pending business, which the clerk will state.

The legislative clerk read as follows:

A bill (H.R. 3363) making appropriations for the Department of the Interior and the related agencies for the fiscal year ending September 30, 1984, and for other purposes.

The Senate resumed consideration of the bill.

Mr. BAKER. Mr. President, we are back on the Interior appropriations bill.

Let me outline what I see in prospect. This is not a final statement, of course, of what is going to happen, but let me tell you what I think is going to happen.

In just a moment I am going to suggest the absence of a quorum only long enough to make sure that all the principals are notified who have indicated in my cloakroom they wish to be in the Chamber as we proceed. I do not expect that to take more than just a few minutes.

After that, the distinguished manager of the bill, Senator MCCLURE, may or may not have a brief statement to make. That has not yet been fully determined.

Based on the colloquy yesterday, I anticipate that at that point the Senator from Ohio may wish to be recognized to make a point of order.

I think perhaps I will not go beyond that except to say if there is an appeal from the point of order I would hope, and I have not yet discussed this with the minority leader or anyone else, that we might be able to find the time certain for that vote so that everyone would know where they stand. I will explore that with the minority leader and the managers of the bill.

Mr. President, with that statement, I now suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The acting assistant legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SECOND EXCEPTED COMMITTEE AMENDMENT—RELATING TO SECTION 317

Mr. McCLURE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The second committee amendment to H.R. 3363.

Mr. McCLURE. Mr. President, the matter pending is the second committee amendment to the Interior appropriations bill, and that second committee amendment has been the subject of some conversation on the floor and off the floor for the last couple of days.

The Senator from Ohio is opposed to that committee amendment and has indicated that he intends to make a point of order against that amendment.

It is my understanding that the Senator from Ohio and others who are interested have no objection to fixing a time certain to vote upon the appeal from the ruling of the Chair if the Chair rules in favor of the point of order that the Senator from Ohio will make.

Would the Senator from Ohio respond to that?

Mr. METZENBAUM. I think I heard the Senator say that upon my making a point of order and an appeal is taken——

Mr. McCLURE. If the Chair sustains that point of order.

Mr. METZENBAUM. The Chair sustains my point of order that I will have no objection to a time certain for a vote on the appeal.

Mr. McCLURE. Yes.

Mr. METZENBAUM. I have no objection.

Mr. BAKER. Mr. President, will the Senator yield? I am pleased in the extreme to hear that. I wonder if the Senator from Idaho and the Senator from Ohio would consider 11:45 as the time for that.

Mr. METZENBAUM. That is agreeable to this Senator.

Mr. BAKER. Would the minority leader be similarly inclined?

Mr. BYRD. I am not sure. It is all right with me. We are putting it on the telephone because earlier we ran it as an 11:30 suggestion.

Mr. JOHNSTON. Mr. President, will the Senator yield to me?

Mr. BAKER. The Senator from Idaho has the floor.

Mr. McCLURE. I would be happy to yield to the Senator from Louisiana for a question.

Mr. JOHNSTON. As I understand it, this bill will not pass until we come back after August recess.

If I am correct in that, it would appear to me that it would be the better part of discretion to lay aside this whole amendment until after we return because the effect of this amendment, according to the advice I have received, is not altogether clear. The political support for the amendment is very fractionated in Washington, Oregon, and in the areas concerned.

It would seem to me that that period of time over the August recess would give all parties time to examine the amendment, to determine its legality, its precise legal effect, and to come back with a much more clarified position, with no one surrendering any rights in the meantime, and then as the first order of business when we get back on this bill we could vote for it at that time. Is there any reason not to do that?

Mr. BAKER. Will the Senator yield to me?

Mr. McCLURE. Mr. President, before yielding to the majority leader, let me say it is not clear to me that it will not pass.

Mr. BAKER. Mr. President, I do not know much about WPPSS, but I know I want to pass this bill before we go out. So let me say to my friend from Louisiana that it is my intention to try to move this bill. I have discussed that with the minority leader.

Mr. BYRD. Will the Senator yield?

Mr. BAKER. Yes.

Mr. BYRD. It came as a surprise to me that my dear friend indicated that it would not pass until we get back. I hope that is not the case.

Mr. BAKER. That is not my view, Mr. President.

Mr. JOHNSTON. I stand corrected.

Mr. McCLURE. With the expectation that the Senator from Ohio will make his point of order and that the Chair will rule upon that point of order without debate, which is only subject to the permission and discretion of the Chair, if that point of order is sustained by the Chair, it would be my intention to appeal the ruling of the Chair and we would have a limited period of debate upon that. The minority leader indicates he is not at this time prepared to agree to a time certain for that, but I am certain, for the purposes of the membership, it is the expectation of all of the parties now on the floor that that will be a limited period.

I am prepared to yield the floor to the Senator from Ohio in order to make his point of order, if he desires to do so at this time.

Mr. METZENBAUM. I thank the Senator from Idaho.

POINT OF ORDER

Mr. President, I raise the point of order that the pending amendment is not in order as being legislation on an appropriations bill.

The PRESIDING OFFICER. The Chair rules that it is legislating on an appropriations bill.

The majority leader.

Mr. BAKER. I yield to the Senator from Idaho.

Mr. METZENBAUM. Mr. President, I do not think the Chair finally ruled. He said that it is legislation on appropriations, but I do not think that he ruled that the point of order is well taken.

The PRESIDING OFFICER. The Chair did not say that. I would submit the question to the Senate. Is legislation in order on an appropriations bill?

Mr. METZENBAUM. Would the Chair be good enough to advise the Senator from Ohio why the matter would be submitted to the Senate rather than a ruling on the question? Mr. President, at this point I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. BAKERS Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, is there a point of order pending before the Senate?

The PRESIDING OFFICER. The Chair states the point of order is well taken.

Mr. McCLURE. Mr. President, I appeal the ruling of the Chair and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BAKER. Mr. President, the appeal is debatable. I have consulted now with the minority leader and my own cloakroom. I ask unanimous consent that the time for the debate on the appeal extend until the hour of 11:45 a.m. and that the time between now and 11:45 a.m. be divided equally between the distinguished manager of the bill on this side and the minority leader or his designee, and that the vote on the appeal or in relation to the appeal occur at 11:45 a.m.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I designate Mr. JOHNSTON to control the time on this side.

Mr. McCLURE. Mr. President, I yield such time as I may consume and then I will be prepared to yield to Members who wish to speak on behalf of the appeal.

Mr. President, there are three reasons for us to appeal the ruling of the Chair and to ask for the support of our colleagues on that ruling. The first of those reasons is that, as a matter of tradition and a matter of law, the Bonneville Power Administration has gotten its instructions on its operations in the appropriations process. The very fact that we are debating what should be done about its relationship with the Washington public power supply system is evidence of that very fact.

The net billing agreements, under which Bonneville has the relationship with WPPSS, were approved in the appropriation process. The very fact that we have a debate about the question of financing WPPSS No. 2 out of the net revenues was because it was approved in the budget of Bonneville that was sent to the Appropriations Committee and approved in that process. The General Accounting Office yesterday has indicated that that process is legal and that they have the authority to do it, which confirms what many of us believe to be the fact. So by tradition and by law, we have done what we now seek to do with respect to some directions to Bonneville in the conduct of their administration of their responsibilities under the law.

The Transmission Act that was passed in 1974 specifically said that and said that they would get their directions in the appropriations process.

So, again, although I am chairman of the Energy and Natural Resources Committee, the committee in the Senate that has the legislative jurisdiction over authorizations, I also have

to say that traditionally, and as a matter of past practice and law, we have handled it through the appropriations process with only a couple of exceptions and, therefore, I believe that the ruling of the Chair, while ordinarily correct with respect to legislation on an appropriation, in this instance is not correct.

Second, Mr. President, we have an emergency in the Northwest. We have an emergency that demands urgent attention. It is no secret that the Washington public power supply system is in trouble. They started five power plants. They have terminated two of those five, they have mothballed another and, unless we take action, it is likely that a fourth of those will also be mothballed for some period of time.

To us in the Northwest it seems unfair that others in this body should tell us that we cannot seek a solution that our rate payers and that our consumers will pay for. Why this great concern from people for other areas in the country about how we pay our bills in the Northwest?

Now they do have an interest because they are concerned as to whether or not this is going to increase Bonneville's indebtedness. There is no full faith and credit that is under existing statute. The Federal Treasury is not bound by the debts of Bonneville. Certainly they are exposed to some concern in that regard.

But the bond holders of units 4 and 5 and the bond holders of 2 and 3 need to be concerned about the collapse of the financing for those systems. It just defies my imagination to believe that anybody here can be blind to the fact that some of their own constituents, holders of those bonds, may indeed be adversely affected unless we adopt this amendment.

There is no down side to them. There is a very positive up side. At the very least, it cannot hurt them.

Therefore, I urge that the Senate overturn the Chair on this vote.

Mr. President, I reserve the remainder of my time.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, it is with a great deal of reluctance that I oppose the motion of my distinguished friend from Idaho. I do so not because I want to impede getting on with finishing with the powerplants of WPPSS. To the contrary, as the Senator from Idaho knows, I strongly support finishing in the most expeditious way with the least loss to the bond holders, the rate payers, and the taxpayers of the United States.

At the appropriate time I expect to join with him for legislation to do that.

The present issue is, should we overturn the ruling of the Chair that this is legislation on an appropriations bill?

Mr. President, does the Senator from Ohio wish time?

Mr. METZENBAUM. Yes, but I was enjoying what the Senator from Louisiana was saying. If he will reserve 3 minutes, I would be happy.

Mr. JOHNSTON. Let me yield at this time so I can check with someone in the cloakroom.

Mr. METZENBAUM. Mr. President, how much time does the Senator from Louisiana have remaining?

The PRESIDING OFFICER. Eight minutes.

Mr. METZENBAUM. I yield myself 4 minutes.

Let me explain what this issue is all about. There are two parts to it. One has to do with the procedural aspect. That has to do with the matter of putting a legislative proposal on an appropriations bill. That is what this is. This would create a new entity, a new entity which would then go out and borrow something approaching $1 billion. That entity would then be repaid by the assurances of the Bonneville Power Authority that the money would be forthcoming to pay off those bondholders.

That does not belong on an appropriations bill. It certainly does not belong there without any hearings. Even with hearings it would not be right or appropriate to do so.

What this really means, besides the procedural aspect, is that indirectly the taxpayers of the United States will be charged with millions and maybe billions of dollars by further delaying the Bonneville Power Authority's repayment of $8 billion to the U.S. Treasury.

When you look at their record to date, you find that the BPA has not been repaying the money that they owe. As a matter of fact, in the last 10 years, they only repaid about $42 million out of an obligation of $7.8 billion, and in the last 3 years there were no payments paid with respect to this.

This additional almost $1 billion will be put in front of that repayment. So the taxpayers of the country will be carrying this obligation of BPA at far less than the rate that the Federal Government pays for money.

So when you talk about this—let us pick a figure of 5 percent because some of it is at the rate of 3 percent, and I think it is actually lower than the average of 5 percent—you are talking about the Federal Government subsidizing this at anywhere from 5, 6, or 7 percent. I just noticed today that 3-year notes of the Treasury are going at something approaching 12 percent at the moment.

All you have to do is multiply that difference times $7 billion and you see the difference to the Federal Treasury.

This does not make sense. To date, according to the Federal Energy Regulatory Commission, BPA's repayment has shorted taxpayers $780 million up to an amount of $1.4 billion.

For those bond holders who think that this is a bailout for them, let me point out that it indeed will not provide that bailout but they may be harmed by this provision.

There are substantial legal questions as to the impact of this amendment on the current bond holders and it is entirely likely that the new bond holders would stand in a preferential position as compared to the present bond holders.

There is a bailout, however, that should be noted. That is a bailout for the investor-owned utilities. Four of them have $600 million in No. 3. They own about 30 percent of it. Indeed, there would be that bailout of that investor-owned utility group.

If, as Senator MCCLURE says, the BPA already has authority in this bill, why are we spending 2 or 3 days debating it? Why is there such a need in order to put it into an appropriations bill?

There is a hearing this afternoon on the authorizing legislation for a new piece of legislation.

The fact is, they do not have the authority and the bill gives them such authority making it indisputably legislation on an appropriations bill.

I would like to point out to my colleagues the whole question of is there an emergency. There is no emergency because I have been trying to make this point of order for the last 3 days and I have not been able to do so. I have been asked to hold it. Only because I insisted this morning am I able to make it today.

But on the further point of whether there is an emergency, there is a GAO opinion that was made available just yesterday affirming Bonneville Power Authority's right to use rate revenue to finish unit No. 2. I am advised that BPA itself believes that this authority will enable then to proceed on schedule for from 4 to 6 months. In short, there is no reason to pass this today, next week, or next month.

I urge upon my colleagues that we follow the rules of the Senate and we not go to the procedure of putting legislation on an appropriations bill.

Mr. JOHNSTON. Mr. President, I earlier urged the Senate to uphold the point of order. I would now withdraw that and say that the Senate should work its will without my advice. Let me state the situation as I know it at this time.

First of all, the Washington delegation, or should I say the Northwest delegation, as I understand it, is now united, which is a change from what I had previously been advised. That is, Senator JACKSON and Senator HAT-

FIELD now support the position of the Senator from Idaho.

Second, I am advised that in my memorandum that there is no emergency, that the Senator from Ohio is correct, and that there is some 4 to 6 months.

Third, I am advised that there is a difference of opinion in the Northwest, first as to the urgency in point of time, and, second, as to the legal efficacy or legal imperviousness, should I say, of this matter.

At the same time, I think it is the position of those in the Northwest that there is an emergency and whatever legal defects, if any, this legislation would have can be worked out in the meantime. This is a matter, of course, of great moment, not only to the bondholders but to the entire Northwest and, indeed, to the Nation.

I am advised, Mr. President, that there is no question about Federal full faith and credit. There would be no burden, I am advised by memorandum, to the U.S. Treasury. So, in that respect, it is a matter that principally addresses itself to the Northwest.

So, with apologies to my colleagues on both sides for now being placed in the position of being advised at the last moment of a change in position of the Northwest delegation, I therefore yield to my colleague.

How much time remains, Mr. President?

The PRESIDING OFFICER. All the time of the Senator from Louisiana has expired.

The Senator from Idaho.

Mr. METZENBAUM. Mr. President, I ask the Senator from Idaho, when he gets done with his remarks, to yield to me 1 minute of time.

Mr. McCLURE. Mr. President, I ask unanimous consent that the time on both sides be extended for 1 minute each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. McCLURE. Will the Senator from Louisiana yield to the Senator from Ohio?

Mr. JOHNSTON. Yes, I yield.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, is the Senator from Ohio recognized?

The PRESIDING OFFICER. The Chair said, "the Senator from Ohio."

Mr. METZENBAUM. Let me make it clear, Mr. President, that the Washington delegation in the House has not agreed on this. Let me also make it clear that 23 State representatives in the Oregon Legislature sent a telegram indicating their opposition to this proposal, that the speaker of the Oregon House sent me a letter indicating his opposition to this proposal; that the public power council has indicated its opposition to this proposal; that the Chemical Bank is sort of ambivalent as to where they stand, representing the bondholders, as to whether this is or is not good legislation.

If it is so urgent, why have we waited 3 months after the problem became obvious, and why have not the banks and the bondholders been heard? I want to point out they not only have not been heard to date but, as of this minute, they have not been invited to this hearing this afternoon. That is something I do not understand.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. McCLURE. Mr. President, I yield 1 minute to the Senator from Oregon.

Mr. HATFIELD. Mr. President, I think we have a procedural question we are going to vote on now which has ample historical precedent to protect the oversight of the Bonneville Power Administration in the hands of the Appropriations Committee, particularly the subcommittee, which I chair. If you want to call it turf, it is turf, very simply. So I am going to vote to overrule the Chair.

I want to make the second point that I think the substantive issue of the amendment has to be debated at a later time. The substantive issue is not before us and I have indicated before we have to get the utilities of the Northwest to get behind this amendment if it is going to be supported. It is going to take some kind of clearance on the question of agreement on the House side and we are going to have to have a guarantee of the insulation of the ratepayer. Those are some of the contingencies on which I have withheld my support. I have still not made my decision on the amendment until those contingencies are met. But on the procedural issue, I am going to vote to maintain the oversight of the Bonneville Power Administration in the Committee on Appropriations as it has been all these years. Let us keep the two issues separate, insofar as they are interrelated.

McCLURE. Mr. President, I yield to the distinguished Senator from Washington (Mr. GORTON).

Mr. GORTON. Mr. President, the Presiding Officer obviously ruled on this point of order and in the way in which he was advised by the Parliamentarian. The Parliamentarian, in turn, gave that advice in spite of the fact that the Bonneville Power Administration authority is customarily and historically granted through appropriations acts. Both the advice and the ruling in that narrow sense were correct, but the importance of continuing the process by which BPA is handled through appropriations acts urges that all parties, no matter what their views on the merits of this litigation, vote to overrule the ruling of the Chair. On the merits of the proposal, we do indeed have an emergency in the Pacific Northwest, a problem which is without precedent in the history of our country.

An ambitious undertaking to construct five nuclear powerplants in the Pacific Northwest to meet projected energy needs has been devastated by inflation, tremendous cost overruns, and terrible mismanagement. Two of the plants, WPPSS 4 and 5, went into default last week. These plants were owned by 88 public utilities. There is no direct Federal interest in these plants. WPPSS 1, 2, and 3 are backed by the Federal Government through net-billing agreements under which the Bonneville Power Administration would guarantee repayment of the debt through its rate structure. BPA owns 100 percent of the output of plants 1 and 2; 70 percent of the output of plant 3 is owned by BPA and 30 percent is owned by four investor-owned utilities.

WPPSS 1, 2, and 3 are the subject of the amendment we are discussing today. WPPSS 1 has been mothballed indefinitely; WPPSS 2 is 98 percent complete; WPPSS 3 is 78 percent complete. WPPSS 2 is scheduled to be operational next year. WPPSS 3 will be operational in 1986.

Due to the default of WPPSS 4 and 5, WPPSS cannot go to the bond market to obtain conventional financing. Without financing, it will be necessary to ramp down WPPSS 3 and put it in a mothball status. This is a plant which has been built on schedule, under budget, and which is a model of construction efficiency in the nuclear power field. If it is ramped down, thousands of workers will lose their jobs in Washington State and experienced personnel will leave the area. The 20-year power plan which was recently adopted by the Pacific Northwest Power Planning Council clearly shows a need for the power from WPPSS 1, 2, and 3 within a decade. The current surplus of power will not last forever. If WPPSS 3 is not completed, ratepayers could end up with three terminated plants, a multibillion dollar debt which must be repaid, and a shortage of power in the future. For the protection of all ratepayers in the Northwest, I believe that it is imperative that WPPSS 2 and 3 be completed as soon as possible so that the plants can begin producing power and generating revenues to help retire the tremendous debt that has been incurred by these plants and to help reduce the financial burden on ratepayers.

The amendment we are discussing today simply clarifies BPA's authority to enter into alternative financing agreements for the construction of WPPSS 2 and 3. BPA has already indicated that it will complete the last 2 percent of WPPSS 2 through the present rate structure. This amend-

ment essentially applies to WPPSS 3. Several major U.S. banks have indicated that financing with reasonable rates is available to complete WPPSS 3 if this amendment is adopted. The language in the amendment provides specific limitations and directives to BPA on how it may use this authority. These directives include that the authority be used in a prudent and business-like manner and that the impacts of the terms of financing on ratepayers be thoroughly analyzed.

Section 11(B) of the Federal Columbia River Transmission Act states that BPA expenditures are subject to "specific directives and limitations * * * included in appropriations acts." 16 U.S.C. 8381(B). The intent of this legislation is to impose specific directives on the Bonneville Power Administration and that is why this amendment is included in this bill.

As I mentioned earlier, the regional power plan assumes that WPPSS 1, 2, and 3 will be completed and the power will be needed within the decade. Any delay in the completion of WPPSS 2 and 3 means increased construction costs and an additional financial burden on Northwest ratepayers. I have been informed that the cost of a 1-year delay in the construction schedule will be $195 million. This will further burden the investor-owned utilities who own 30 percent of the output of WPPSS 3 and poses a threat to their solvency. High stakes are at risk if this amendment does not pass. The stakes at risk include far more than the welfare of the investor-owned utilities and their customers, however. They include the welfare of all electric consumers in the Pacific Northwest as well as the economic health of the entire region.

This is not a Federal bailout. It is not a bailout of bondholders of WPPSS 4 and 5 or WPPSS 3. It is a fact that the bonds for WPPSS 4 and 5 have been repudiated and that the bondholders will have to suffer the consequences. The present bondholders on WPPSS 3 are not threatened. They are being paid the obligations which are owed them by the ratepayers of the Pacific Northwest whose power comes from the Bonneville Power Administration. It is a simple fact that because of the default of WPPSS 4 and 5 financing cannot be obtained to complete WPPSS 3. This amendment will allow the completion of WPPSS 3. When it is completed, it will produce power which will, in turn, produce income which will, therefore, increase rather than decrease the security of the bondholders in WPPSS 3.

The Governor of the State of Washington recently appointed a blue-ribbon commission to study all of the problems relating to WPPSS and to make recommendations on how to resolve these complex matters. The passage of this amendment will in no way impede the efforts of this commission.

The amendment does not involve appropriated funds; it does not extend the full faith and credit of the United States to financing agreements entered into by BPA; and it will not cost the general taxpayers 1 cent. It also has nothing to do with the speed with which the Bonneville Power Administration pays its obligations to the Federal Treasury. To the contrary, if this amendment does not pass and if WPPSS 2 and 3 are not completed, the economy of the entire Northwest will be seriously impacted resulting, undoubtedly, in slower payments to the U.S. Treasury.

The Pacific Northwest faces a true crisis. This amendment will not solve all of the complex problems regarding WPPSS. But it will help the construction of WPPSS 3 go forward, at no expense to the general taxpayer, so that it can begin producing power, generating revenues, and reducing the financial burden on northwest ratepayers. I urge my colleagues to join me in supporting this important amendment.

Mr. McCLURE. Mr. President, how much time does the Senator from Idaho have?

The PRESIDING OFFICER. The Senator has 2 minutes.

Mr. McCLURE. I thank the Chair.

First, Mr. President, I want to correct a technical error in what the Senator from Ohio has said. He says this will create a new entity. It does not do that. It permits Bonneville to contract with the new entity, if created, to carry out the purposes for which it has relationship already with WPPSS. It does not create a new entity, but it would permit Bonneville to enter into an appropriate contract with a new entity.

Second, Mr. President, we do have a letter from the Department of the Treasury of the United States that indicates they have no objection to this amendment. I think it is important for us to understand why they have no objection. Not one penny of taxpayers' money is involved, not one penny. It is the ratepayers of the Northwest who will pay, if, indeed, this goes forward.

As a matter of fact, we may have some taxpayers who are bondholders who will lose some money if this arrangement is not completed.

Mr. METZENBAUM. Will the Senator from Idaho yield for a question?

Mr. McCLURE. I do not have time, Mr. President, I am sorry.

With reference to the status of BPA's obligation under its borrowing authority, it simply has nothing to do with this amendment at this time. That is a separate question. It is an important question and needs to be dealt with. There are no appropriated funds involved here. There is no Federal borrowing involved here. There is no bailout of Federal funds, no way that this is a bailout.

All costs—and I repeat, all costs—will be borne under the existing ratemaking structure and under the congressionally approved net billing agreements—congressionally approved in the appropriations acts, just as this amendment seeks to give Bonneville the authority to deal with this problem by an additional contract.

Mr. President, it has been suggested that this is an issue for the Northwest to decide. It is our people who bear the burden if it fails. It is our people who pay if, as a matter of fact, this amendment is adopted and there is a real emergency.

Mr. President, I hope that the ruling of the Chair will not be sustained and I urge all Members to vote nay.

The PRESIDING OFFICER. All time has expired. The question is, Should the decision of the unfettered, independent Chair stand as the judgment of the Senate?

Mr. METZENBAUM. Mr. President, have the yeas and nays been asked for?

The PRESIDING OFFICER. They have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Wisconsin (Mr. KASTEN) are necessarily absent.

I further announce that, if present and voting, the Senator from Wisconsin (Mr. KASTEN) would vote "yea".

Mr. CRANSTON. I announce that the Senator from Ohio (Mr. GLENN) is necessarily absent.

The PRESIDING OFFICER (Mr. BOSCHWITZ). Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 40, nays 57, as follows:

[Rollcall Vote No. 241 Leg.]

YEAS—40

Bentsen	Hart	Nunn
Biden	Hawkins	Packwood
Bingaman	Helms	Pell
Bradley	Hollings	Proxmire
Bumpers	Humphrey	Pryor
Burdick	Kennedy	Riegle
Byrd	Lautenberg	Sarbanes
Chiles	Leahy	Sasser
Cranston	Levin	Trible
DeConcini	Long	Tsongas
Dixon	Matsunaga	Warner
Dodd	Melcher	Weicker
Durenberger	Metzenbaum	
Eagleton	Mitchell	

NAYS—57

Abdnor	Dole	Huddleston
Andrews	Domenici	Inouye
Armstrong	East	Jackson
Baker	Exon	Jepsen
Baucus	Ford	Johnston
Boren	Garn	Kassebaum
Boschwitz	Gorton	Laxalt
Chafee	Grassley	Lugar
Cochran	Hatch	Mathias
Cohen	Hatfield	Mattingly
D'Amato	Hecht	McClure
Danforth	Heflin	Moynihan
Denton	Heinz	Murkowski

Nickles	Rudman	Symms
Percy	Simpson	Thurmond
Pressler	Specter	Tower
Quayle	Stafford	Wallop
Randolph	Stennis	Wilson
Roth	Stevens	Zorinsky

NOT VOTING—3

Glenn	Goldwater	Kasten

The PRESIDING OFFICER. On this vote the yeas are 40, the nays are 57. The decision of the Chair does not stand as the judgment of the Senate.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the decision of the Chair does not stand as the judgment of the Senate.

Mr. GORTON. Mr. President, I move to lay that motion on the table.

Mr. METZENBAUM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. METZENBAUM. I withdraw that request.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2110 TO SECOND EXCEPTED COMMITTEE AMENDMENT

Mr. McCLURE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read amendment No. 2110.

Mr. BYRD. Mr. President, may there be order?

The PRESIDING OFFICER. The Senator is correct.

The Senate will come to order.

The Senator may proceed.

Mr. METZENBAUM. Has the amendment been read?

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk resumed reading the amendment.

Mr. BYRD. Mr. President, we have to have order to hear the clerk read this amendment.

The PRESIDING OFFICER. The Senate will be in order. Senators wishing to conduct conversations will please retire to the cloakroom.

The clerk will proceed.

The assistant legislative clerk resumed reading the amendment.

Mr. BYRD. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Chair has to say again Senators, who are conducting conversations, please retire to the cloakrooms.

Mr. BYRD. I thank the Chair for his persistence and I hope Senators will respect it because the amendment is being read at the request of the Senator and Senators should show him the courtesy to be in order.

The PRESIDING OFFICER. The clerk will commence reading the amendment once again.

Mr. BYRD. Mr. President, I object to reading of the amendment until we have order in the Senate.

The PRESIDING OFFICER. The Senator is correct.

The clerk will commence reading of the amendment again, please.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an amendment numbered 2110.

On page 81, line 14, before the period insert the following: ": Provided, That all of the restrictions and limitations set forth in 16 U.S.C. 839(j)(1), shall apply to any contracts or obligations entered into by the Administrator pursuant to this provision"

Mr. McCLURE. Mr. President, this is an amendment to the amendment, and it restates what I understand the law to be, that there can be no question that any obligations that might be entered into would be any obligation of the Treasury of the United States.

I understand the current law to be that the full faith and credit of the United States cannot be pledged to these projects, and this amendment simply restates that provision of the law.

The Treasury Department is approving of the amendment suggested that we make this further amendment to remove any doubt as to whether or not the full faith and credit of the United States was pledged. This amendment makes it abundantly clear that the full faith and credit of the United States is not involved in this amendment.

I understand it has been cleared by staff of the minority manager of the bill.

I know of no objection to the amendment. I am happy to respond to any questions.

If not, I urge adoption of the amendment.

Mr. BYRD. Mr. President, I suggest the absence of quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I understand——

Mr. McCLURE. Mr. President, may we have order.

The PRESIDING OFFICER. The Senate will be in order. Senators wishing to converse please retire to the cloakrooms.

Mr. BYRD. Mr. President, I thank the Chair and I thank the manager. It is my understanding in talking with the Senator there is no objection on this side and that the acting manager, acting ranking manager, has no opposition to it. So there is no opposition.

Mr. McCLURE. I thank the Senator.

Mr. MELCHER. Will the distinguished manager yield.

Mr. McCLURE. I would be happy to yield.

Mr. MELCHER. The effect of this amendment that has been offered by the chairman and which, even though a point of order was raised, the Senate and the Chair ruled against as being legislation on appropriations, but the Senate has found favor with, overruling the Chair, does the entire amendment in any way obligate the rural electrification in our State of Montana to back any bonds that might be sold?

Mr. McCLURE. Mr. President, the question of the rural electric cooperatives to be bound under their agreement with WPPSS is pending before the court and no decision has been made as yet. The amendment that has been—is now the pending matter, does not deal directly with that in any way, shape or form. But let me respond to the Senator from Montana by indicating that the underlying amendment, the committee amendment, will not affect the REA's liability in any way.

Mr. MELCHER. Will the Senator yield further?

Mr. McCLURE. I might have misstated that. Let me just add to that the Bonneville Power Administration has an obligation under the net billing contracts to pay according to the terms of those contracts. If No. 3 is not completed and does not generate power, which can then be marketed, and if the REA's are not released of their obligations, they would have a greater obligation than if the amendment is adopted. If the amendment can only help them in the event of those certain circumstances that I have described were all to turn out adversely against them the amendment would certainly assist them but it cannot hurt them.

Mr. MELCHER. If the chairman will yield further, the expression I have heard from I think four out of five rural electric cooperatives who have expressed an opinion on it was a hope that these matters would be clarified before Congress took action and for that reason I have been extremely hesitant in accepting this proposal that the chairman has made.

Mr. McCLURE. Mr. President, I had earlier hoped that we could take some action that would clarify the obligations of the several parties with respect to 4 and 5. That is the matter of most critical concern to bondholders and contracting parties.

As the Senator knows, the Supreme Court of the State of Washington has ruled that the public utility districts in the State of Washington are not bound by their contract because they did not have the authority to enter into them. Petition for rehearing on that court suit in the State of Washington was just heard 2 weeks ago. There are similar lawsuits with respect to the liabilities of the public entities

in the State of Oregon, in the State of Idaho, and with respect to the REA's. I have not been able to come up with an amendment that has any broad support that deals with all of those problems, and the amendment before us does not purport to deal with all of those problems. It is simply an attempt to deal with the financing of the completion of construction on plant No. 3 and to a lesser degree plant No. 2. So it does not deal with those underlying broader questions. I cannot say that it does. I regret we have been unable to contrive any language that has any hope of congressional support to deal with the larger problems.

Mr. MELCHER. I thank the Senator for yielding to me but I would ask him to yield on one more point, one more question: Would it be possible to have public hearings on this proposal which is admittedly in a peculiar posture here on an appropriations bill prior to the resolution of this appropriations bill in the Senate and in conference?

Mr. McCLURE. Certainly we have not yet disposed of all of the issues in this bill. There are two or three others and I suspect it will take a little time to dispose of all the matters that are contained within the Interior appropriations bill now pending.

In the event we get all of those issues resolved and the Senate approves of the bill it will then go to conference. There is absolutely no possibility that that will be done before September. We have at least 6 weeks in which to try to resolve broader questions and also to perhaps explain the questions that are in the minds of some with respect to this particular proposal. So there will be adequate time between now and final action for the discussion of these matters.

As the Senator knows, we have scheduled in the authorizing committee this afternoon at 2 o'clock a hearing with regard to this proposal that is now before us and witnesses have been called who will be testifying this afternoon.

Mr. MELCHER. I would urge that further hearings be allowed in September in the Energy and Natural Resources Committee because I believe some of the participants would like to have some time to evaluate the situation—I am speaking principally of the rural electric cooperatives.

Mr. McCLURE. I am certain there are a great many people who want to evaluate this situation and I am very aware of that. If the discussions, the informal discussions, that will take place across the region and throughout the Northwest and I suspect across the Nation in the next 6 weeks have not substantially resolved that, those issues, it may well require further hearings but I do not know that yet.

Mr. MELCHER. I thank the chairman.

Mr. McCLURE. I thank the Senator from Montana.

Is the question on the pending second-degree amendment.

The PRESIDING OFFICER. The question is on agreeing to the second-degree amendment.

Mr. PROXMIRE. Mr. President, I am mystified. I do not understand. I have been here only 25 years and I cannot understand what the Senate just did. We have almost no information on this except the debate on the floor which has been desultory at best; we have had no committee report, no hearings. There is a serious question in my mind, as a member of the Appropriations Committee, as to whether the right subcommittee even took this up.

This bill, this measure bailing out the WPPSS, should be in the authorizing committee of which the Senator from Idaho is chairman. They ought to have hearings, they ought to give us a report, they ought to give us information on what is going on. They have not done it and he is going to have a hearing this afternoon and yet we are going ahead now, presumably acting on this before we get any information as to what we are doing.

Mr. President, years ago we had a great Senator here from Oregon named Wayne Morse, and Wayne Morse used to point out that the procedures of the Senate are far more important than the substance, and I think in this case this is certainly true.

It may well be that we should pass this amendment, but I cannot for the life of me understand why we should pass an amendment on which we have had no opportunity to get the full story. The distinguished Senator from Idaho has just said there is no chance this is going to be enacted between now and 6 weeks from now, in September. He has indicated that broader questions will be resolved in the meantime, between now and then. What is wrong with the Senate knowing what it is doing? Why should we not have the information first? If ever there was a dramatization of the Alice in Wonderland, Lewis Carroll report of verdict first, trial later, this is it.

Instead of getting the information first, we want to act first and then get the information.

Mr. President, I think it is just plain wrong. I intend to do all I can, together with other Senators who I think will also do the same, to prevent us from acting on this amendment until we have hearings, until we get a report from the committee on the basis of those hearings, and until we have a chance to study what we are doing.

Mr. McCLURE. Will the Senator yield?

Mr. PROXMIRE. I am happy to yield.

Mr. McCLURE. Is the Senator opposed, likewise, to the second-degree amendment which is pending?

Mr. PROXMIRE. I am opposed to acting any further on this matter until we, as I say, have a report and know what we are doing. The action the Senator is proposing in the second-degree amendment may have a great deal of merit and may be one I might support. But I do not think we should act any further on this entire matter until we have an opportunity to have the usual Senate procedure of a report on this matter.

The Senator has indicated himself—and he is the expert on this matter—that we are not going to be able to get final action until September anyway. So I do not see any reason why we should not insist on getting all of the information.

Mr. McCLURE. Will the Senator yield further without losing his right to the floor?

Mr. PROXMIRE. Yes.

Mr. McCLURE. Mr. President, it seems to me that the Senator from Wisconsin is appropriately concerned about the impact of the amendment. And while he said the debate has been desultory, I thought it had been rather spirited. As a matter of fact, it has been debated for 2 days. A lot of questions have been asked and a lot have answered. It is a question of whether or not people believe the answers and will accept those answers. They are entitled to their opinions concerning the merits of the legislation.

But I would hope at least that we could adopt the second-degree amendment which in no way prejudices the Senator's case. As a matter of fact, it clarifies one of the issues that has been raised. That is why it is offered.

I hope the Senator can see fit to permit the adoption of the second-degree amendment, reserving his right to debate the underlying amendment, as, indeed, I suspect he intends to do.

Mr. PROXMIRE. Well, the Senator is making a very reasonable appeal here. But it seems difficult for this Senator is making a very reasonable appeal here. But it seems difficult for this Senator to go along, as I say, any further at all on this matter when, at the Senator's hearing this afternoon, as I understand it, there will be no testimony by banks, no testimony by the bondholders, none by the bond rating agency, none by the Federal Energy Regulatory Commission—none of those will testify. So we are just not going to get a record here.

I think the Senate ought to act on the basis of a record. That is what our hearings are all about. This is what our committees are for.

This was put in, as the Senator well knows, in the Appropriations Committee. I could not be there that day at

the meeting. But, as I understand it, it was put in at the last minute with almost no discussion at all, even in the Appropriations Committee at the time it was marked up, let alone any basis of hearings that would have given us a solid basis for it.

Mr. McCLURE. Will the Senator yield further?

Mr. PROXMIRE. Yes.

Mr. McCLURE. The Senator does understand the pending second-degree amendment is simply a restatement of the law that says full faith and credit of the United States is not involved in this matter.

Mr. PROXMIRE. Well, yes; as I say, I think that sounds very reasonable.

Mr. McCLURE. Does the Senator want the full faith and credit of the United States pledged?

Mr. PROXMIRE. Well, of course, the Senator feels, under these circumstances, that I would not. But I honestly feel, I say to the Senator, that, under the circumstances, I have a right, as a Senator, and a duty, as a matter of fact, as I see it, to insist that we not act further on this bill, which can involve a $7.2 billion obligation from the Federal Government.

Mr. McCLURE. No.

Mr. PROXMIRE. Oh, yes.

Mr. McCLURE. May I read this for the Senator? Will the Senator yield for that?

Mr. PROXMIRE. Well, wait a minute. Before I yield, let me just say that the problem here is that the distinguished Senator from Idaho is a man of absolute integrity, but he is also a man who has a deep interest in this, a special interest; in many, many ways, an economic interest in his State. And I think that taxpayers throughout the country should have a complete understanding of this thing. We do not have.

As I say, there is a $7.2 billion liability here, one way or the other, and I would like to know whether or not—maybe the Senator is right and there will not be any obligation on the part of taxpayers. But we have developed that kind of obligation over the years and need it explained.

Mr. McCLURE. Will the Senator yield?

Mr. PROXMIRE. Yes.

Mr. McCLURE. I wish to read into the RECORD an excerpt from Public Law 96-501, December 5, 1980, which deals with the Bonneville Power Administration. I want to read the relevant portion of that statute that is referred to in the pending second-degree amendment. I quote from the act:

> All contractual and other obligations required to be carried out by the Administrator—

That is the Administrator of the BPA—

> pursuant to this Act shall be secured solely by the Administrator's revenues received from the sale of electric power and other services. Such obligations are not, nor shall they be construed to be, general obligations of the United States, nor are such obligations intended to be or are they secured by the full faith and credit of the United States.

Now, that is the current existing law. That is being restated in the second-degree amendment to make absolutely certain that there could be no argument that that law does not apply to the provisions of the pending amendment.

So I hope that the Senator would agree that it is not an obligation of the United States and, second, I hope he would agree that the second-degree amendment at least improves the amendment—certainly does not hurt it—and serves the interest of the Senator from Wisconsin in making sure that his taxpayers do not help pay for the power that is consumed by the consumers in the Northwest.

Mr. PROXMIRE. Well, the Senator may be right, but this Senator does not want to proceed at all and will not proceed, no matter how cogent, no matter how logical, no matter how reasonable, and no matter how sweet the reasons of the Senator from Idaho may be.

I intend to do my best, as one Senator—and I think there are other Senators who may feel the same way—not to proceed further with this measure until we have had a chance to have a hearing on it, until we have had a chance to have an expression of opinion by a whole series of groups that are opposed to this kind of action and have not had a chance to go on record so the Senators can know what we are doing here.

I think there is great difficulty—the Senator may disagree with this—in the House on this matter. Before we act, we should not act in the dark. We ought to know what we are doing. That is the essence of being a responsible U.S. Senator—insisting on the right information before you act.

Mr. McCLURE. Mr. President, I will make one further comment and then I will not debate any further. If I understand what the Senator is saying, in spite of the fact that I am trying to respond to the questions or the doubts that he has, is that he wants independent verification; that he is not satisfied with the assurances made on the floor and in the RECORD as to what this language means; and, as a matter of fact, the Senator has now put the Senate on notice, I guess, of a minifilibuster of sorts with respect to the provisions that makes very clear that the full faith and credit of the United States is not involved.

Mr. PROXMIRE. No, the Senator cannot have it his way every time. This Senator is not filibustering that particular part of it. We have before us not only the amendment in the second degree, we have the amendment itself, and that is what I intend to address.

But until we have more information, I do not intend to have to vote on any part of this. It is no lack of faith in the Senator from Idaho. He knows that. He is my favorite traveling companion. We travel back and forth all the time. He is a good friend and a good man.

Mr. President, I oppose section 317, the Washington public power supply system bailout provision, in the Interior appropriations bill.

This amendment, far from imposing restrictions on the Bonneville Power Administration, as its sponsors contend, actually grants broad new powers to a fiscally reckless agency. BPA is costing the taxpayers hundreds of millions of dollars each year in money loaned to Bonneville by the U.S. Treasury which the BPA simply declines to repay.

Yesterday, the sponsors of this amendment told us that the financial health of Bonneville has nothing to do with the WPPSS bailout amendment, and further, that no Federal moneys will be spent in this WPPSS bailout.

Nothing could be more wrong, Mr. President. Every day, the taxpayers pour more money down the drain at Bonneville. And this amendment reinforces the prospect that if anything else goes wrong at WPPSS—anymore cost overruns, construction delays, mistakes, miscalculations, or sheer incompetence—the Federal taxpayers will end up paying the tab. I refer to the basic amendment.

In fact, the Bonneville Power Administration has been in on the WPPSS debacle from the very beginning. WPPSS was created to supply power to Bonneville, because BPA, which was formed to market hydropower in the Northwest, was never empowered to own and operate nuclear power plants.

The series of five WPPSS nuclear power plants was planned on the basis of power demand forecasts made by Bonneville Power, forecasts that everyone agrees now were seriously flawed and wildly overestimated when the plants would be needed. The first WPPSS unit, for example, is now in mothballs and will not be needed until the late 1980's or early 1990's.

Bonneville then pressured the 88 participating utilities into going along with its projections. It was Bonneville Power that was supposed to oversee construction. And it did, watching costs soar and the endless delays and overruns that led to default on the bonds for two of the nuclear plants—units 4 and 5—last week.

Mr. President, if we accept this amendment, we will simply be making matters worse, because we will be depending on Bonneville to make all the right decisions to bail out WPPSS

when they cannot even keep their own financial house in order.

The remaining WPPSS plants will survive or go bankrupt based solely on the ability of Bonneville ratepayers, who have already suffered fivefold (and in some cases, twelvefold) rate increases since 1979, to pay the rates needed to cover the entire costs of operation and debt service for WPPSS 1, 2, and 3. The bonds to be issued by the new entity that is to replace WPPSS will be secured by a contract with Bonneville Power that commits BPA to pay the principal, interest, and related costs on the new borrowings to the new entity or its debtholders. And this amendment directs Bonneville to finish the WPPSS units and to avoid delay.

In other words, this bailout plan depends on Bonneville's ability to carry the full weight and respond to any future financial crisis at the WPPSS plants. That would be a heavy burden even for a healthy agency, but recent examinations of BPA and its financing by the General Accounting Office and committees of the Congress reveal that Bonneville is itself in trouble and is increasingly unable to pay back its own debts to the Treasury.

BPA now represents a $7 billion Federal investment that is supposed to be paid back to the Treasury. Since its creation in 1939, Bonneville has paid back a total of $638 million to the Treasury. But in the last 10 years, it has managed to pay back only $43 million. As a percentage of Federal investment, Bonneville's paybacks have steadily dropped from 15 percent in 1975, to 10 percent in 1980, and to just 8 percent in 1983.

In other words, they failed to pay 92 percent of what they owe in 1983, this year because BPA now estimates that its fiscal year 1983 revenues from power sales will lag behind its forecasts by as much as $350 million, Bonneville will fall even further behind in its repayment schedule this year, adding another $120 million to its unpaid bill.

In 1981, the General Accounting Office condemned BPA for this practice and called it an "unsanctioned burden on Federal taxpayers." Because BPA constantly delays and reschedules payment of its debt to the U.S. Treasury, the Government must constantly refinance all the BPA debt, usually at much higher interest rates. That constant rescheduling has thus far cost the taxpayers more than $1 billion in extra interest costs. That is an expenditure that is never appropriated by any committee of the Congress, is never OK'd by anyone but Bonneville itself, never appears on any budget, and is simply tacked on to the national debt.

Let me repeat that—the constant rescheduling has thus far cost the taxpayers more than $1 billion in extra interest cost, and that is simply tacked on, as I say, to the national debt.

Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Nebraska, Senator EXON, without losing my right to the floor, yield for 2 minutes, and without it counting as a second speech when I resume.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. Mr. President, I thank my friend from Wisconsin. I recognize he does not want to lose his right to the floor.

I ask unanimous consent that for no longer than 2 minutes the pending matter before the Senate be set aside temporarily to allow me to offer an amendment that has been agreed to, with the understanding that the right of the Senator from Wisconsin will be protected and he will be recognized immediately after the vote on my amendment, if such vote occurs, or a voice vote.

The PRESIDING OFFICER. Is there objection?

Mr. McCLURE. Mr. President, reserving the right to object, my understanding is that the request is to set aside the pending matter and proceed to the consideration of an amendment to be offered by the Senator from Nebraska which has been cleared on both sides, and upon the disposition of that amendment, we will return to the pending matter. The Senator from Wisconsin will be recognized without it being considered as a second speech.

Mr. PROXMIRE. Mr. President, will the Senator yield for a further question?

Mr. EXON. Certainly.

Mr. PROXMIRE. Mr. President, as I understand, the amendment to be offered by the Senator from Nebraska has nothing to do with the question we are discussing right now though it does pertain to the Interior appropriations bill.

Mr. EXON. The Senator is correct.

Mr. McCLURE. We have no objection.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 2111

(Purpose: To provide for the conveyance of certain Federal lands situated in Scotts Bluff County, Nebr., to the Mitchell School District)

Mr. EXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Nebraska (Mr. EXON) proposes an amendment numbered 2111.

Mr. EXON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill insert the following:

That notwithstanding any other provision of law, the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is hereby authorized to convey to Mitchell School District in Scotts Bluff County, Nebraska, all right, title, and interest, except as provided herein, to a tract of land consisting of 20 acres, more or less, more particularly described as the west half southwest quarter northwest quarter section 17, township 23 north, range 55 west, sixth principal meridian. Conveyance of such right, title, and interest shall be upon the condition that the Mitchell School District shall simultaneously convey without cost, an easement right on certain of the above-described lands to the Pathfinder Irrigation District for the purpose of operating and maintaining irrigation canals, laterals, or drains-related storage works of the North Platte project, a Federal reclamation project. The Mitchell School District shall pay the fair market value of the lands as of the date of the conveyance, including administrative costs, as determined by the Secretary. In determining the fair market value of the lands, the Secretary shall recognize the existence of the easement right to be granted to the Pathfinder Irrigation District and shall not include the value of any improvements made on or to the lands by the Mitchell School District or its predecessors. Withdrawals from the public domain as they pertain only to the lands described in the first section under Secretarial Orders of February 11, 1903, and July 24, 1917, for purposes of the North Platte Project, are revoked by conveyance of the rights, title, and interests as set forth in the first section and section 2.

Mr. EXON. Mr. President, the amendment which I am offering here today to H.R. 3363 would expedite the conveyance of a small, isolated parcel of Bureau of Land Management property to the Mitchell School District in Scotts Bluff County, Nebr. Both the BLM and the Bureau of Reclamation have expressed support for this measure which will allow conveyance of 20 acres at fair market value and provide for an easement to the Pathfinder Irrigation District.

The Department of the Interior has indicated to me that it cannot make the conveyance administratively and that special authority must be provided since the site includes improvements which are not related to the irrigation district for which the land was originally withdrawn in 1903. In 1917, the lands were further withdrawn for a community center. The school which has occupied the property is now being phased out, however, the school district cannot dispose of the property until it has title to the land. The Department of the Interior requires authority to convey the land to allow the school district to dispose of this vacant property which has been consuming 18 percent of the district's maintenance budget.

I would express special appreciation to the Senate Appropriations Committee and staff who have been helpful and cooperative in this matter.

Mr. President, I yield the remainder of my time to the manager of the bill.

Mr. McCLURE. Mr. President, the amendment has been cleared on this side, and it is my understanding that it has been cleared with the minority floor manager as well. We have no objection to this amendment and urge its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2111) was agreed to.

Mr. PROXMIRE. I move to reconsider the vote.

Mr. EXON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. EXON. Mr. President, I thank my friend from Wisconsin for his courtesy and by friend from Idaho for his full cooperation.

AMENDMENT NO. 2110 TO SECOND EXCEPTED COMMITTEE AMENDMENT

Mr. PROXMIRE. Mr. President, as I was saying, the constant rescheduling of Bonneville Power's debt has thus far cost the taxpayers more than $1 billion in extra interest costs. That is an expenditure that is never appropriated by any committee of the Congress, is never OK'd by anyone but Bonneville itself, never appears on any budget, and is simply tacked onto the national debt. The result is that Bonneville Power, Mr. President, has turned the U.S. Treasury into a bottomless checking account, in which no checks ever bounce and any expenditure goes, and Uncle Sam and the general taxpayers are the fall guys.

Mr. President, how would you like to have a house mortgage that gives you the option of not making any payments this month or maybe this year if you do not feel like it? All you have to do is say you will make up the difference someday. You might jump at an offer like that, but no bank in the country would ever make a loan like that.

You know what? Bonneville Power, the organization that we want to trust to bail out WPPSS, was smart enough to find one bank that could. That bank, of course, was the Federal Treasury, the U.S. taxpayer.

In 1982, the House Appropriations Committee's Energy and Water Development Subcommittee again demanded that the new administrator of Bonneville, Peter Johnson, explain why Bonneville had decided it did not need to pay back. Mr. Johnson renewed BPA's promise to pay back the Treasury "someday."

In the midst of Senator McCLURE's rush to push this WPPSS Bonneville bailout bill through the Senate, we find there are no fewer than three separate General Accounting Office investigations of Washington Power and Bonneville now underway. One to be issued this week questioned Bonneville's authority to use its revenues to fund Washington Power construction. Another, based on the 1981 GAO study, will demand, we are informed, that Bonneville change its repayment methods to the Treasury and stop ripping off the taxpayers. A third will examine in detail Bonneville's part in the WPPSS debacle and Bonneville's inability to control and oversee cost overruns at WPPSS.

If we approve this amendment now, of course, we will never have the benefit of these critiques of the Washington Power and Bonneville.

Mr. President, this is the principal thrust of my argument. We simply do not have the information. I have rarely seen a case where we have moved ahead when there has been any GAO investigation pending. In this case, we have three of them, plus the fact that we have not had an opportunity to have, as I say, substantial hearings on this matter. The only hearings we are going to have will be this afternoon. Those hearings exclude a number of people who should have an opportunity to testify, including the U.S. Treasury, including the Federal Energy Regulatory Commission, including representatives of bondholders, including the bond rating agencies, including the banks, including others who have a profound interest in this matter.

Mr. McCLURE. Will the Senator yield for a question under the previous conditions?

Mr. PROXMIRE. Yes.

Mr. McCLURE. Mr. President, is the Senator aware that the GAO issued a report dated August 2 on one of the inquiries to which the Senator made reference?

Mr. PROXMIRE. The Senator's point is that of the three GAO reports I am talking about, one of them was made on August 2?

Mr. McCLURE. Yes.

Mr. PROXMIRE. The Senator is correct. That was on a very small point. This is what, August 3? I do not think we have had much chance to study that. I think we have a copy of that somewhere. I just got it.

Mr. McCLURE. Will the Senator yield further under the same conditions?

Mr. PROXMIRE. Yes, indeed, Mr. President.

Mr. McCLURE. Mr. President, I asked the Senator to yield because it is very pertinent to the discussion the Senator was just undertaking. I refer to a portion of the report because it does deal directly with that question. I quote from it:

It is argued that BPA's planned use of $64 million for WPPSS Project No. 2 construction during fiscal year '83 will be derived from general taxpayer revenues in the form of increased deferrals of interest on appropriated debt owed the Federal Treasury.

There is a footnote that references a letter to Senator MARK O. HATFIELD, chairman of the Senate Appropriations Committee, from BPA Administrator Peter D. Johnson, dated April 22, 1982. Then GAO summarizes with respect to that particular question.

Mr. PROXMIRE. Will the Senator advise me what page he is reading from?

Mr. McCLURE. This is on page 19:

We are asked to conclude that because of BPA's need to borrow from the Treasury to help fund all of its operations, BPA construction outlays for WPPSS No. 2 will be financed by some indivisible portion of funds derived from the Federal taxpayer, not by BPA rate payers. The fact remains, however, that the Administrator must set rates for sale of electricity and services at levels to recover BPA's costs, including principal and interest, on outstanding indebtedness.

It makes reference to the United States Code.

The deferral of interest payments due the Treasury does not alter BPA's obligation to ultimately making such payments.

They go on then to discuss it further and say:

Of course, under any of these methods, BPA must honor its covenant with Congress to recover its costs through rate increases.

And they discuss the appropriations acts that approve of what they are doing. They say at the end of the first full paragraph on page 20:

The financial flexibility that such deferrals represent was apparently acceptable to Congress because of BPA's obligation to set its rates at levels adequate to repay its indebtedness.

Then, the beginning of the final paragraph on that page, the final paragraph of the report:

Thus the risk of failure as well as the benefits of success for Project No. 2 are to fall on BPA's ratepayers and not the taxpayers of the U.S.

I thank the Senator.

Mr. PROXMIRE. I thank the Senator. That is very interesting. The trouble is that this has been the case for many, many years. The difficulty is that the burden does not fall on the ratepayers, because the ratepayers have had their rates increased, it is true, but they can only pay so much. The residual obligator is the U.S. Treasury.

Let me read again some of this language. I am glad the Senator called this to my attention.

Mr. McCLURE. Will the Senator yield further under the same conditions?

Mr. PROXMIRE. Yes, Mr. President.

Mr. McCLURE. I am sure the Senator is aware that the Federal Energy Regulatory Commission has rate su-

pervision and therefore, BPA files with FERC what their proposed rate schedule is. Is the Senator familiar with the rate case that has been filed with FERC in which FERC has approved the rates in effect which contemplate repayment?

Mr. PROXMIRE. Would the Senator repeat his question?

Mr. McCLURE. There is a final order issued June 15, 1963, approving their base rates and there is pending a rate case with respect to the rates to be in effect which will contemplate full payment upon the repayment schedule.

The issue of rolling maturity, which the Senator raised, I think is a legitimate issue. That is a matter that, again, was approved in the appropriations process 20 years ago. It is not a new matter and, while I may agree with the Senator on that issue, it certainly is an issue upon which Congress has had the opportunity to act.

While the Senator from Wisconsin or even, perhaps, the Senator from Idaho may not have approved that action, it is, nevertheless, an action which Congress has taken in the past.

Mr. PROXMIRE. It seems to me that they did not approve—in fact, they criticized it, and I am going to read from the Federal Energy Regulatory Commission report.

Mr. McCLURE. The Senator is reading from the one dated June 15, 1983, the final order?

Mr. PROXMIRE. That is correct.

Mr. McCLURE. The Senator is correct that they did not approve of the practice of deferred payments.

Mr. PROXMIRE. In fact, let me just read from it. On page 7, they say:

This brings us each succeeding rate filed.

Mr. McCLURE. Will the Senator yield further under the same conditions?

Mr. PROXMIRE. Yes, indeed.

Mr. McCLURE. Let me read the next paragraph.

Mr. PROXMIRE. Let me just point out that some of these costs have been deferred up to 89 years.

Mr. McCLURE. Let me read the next paragraph:

While the methods and assumptions used by Bonneville may be arguably consistent with DOE procedures, the continuation of such policies and practices will inevitably result in the need to recover substantial sums representing deferred spendable investment during the limited period of time remaining at the conclusion of what would be considered a reasonable amortization period.

Let me also refer the Senator to the current rate case that is now pending before the Federal Energy Regulatory Commission, and in that rate case this is what BPA says:

BPA's next rate increase is proposed to take effect on November 1, 1983, and will be in place for the 20-month period ending June 30, 1985. BPA has made an administrative decision to increase revenues in fiscal year 1984 and fiscal year 1985 to a level which is sufficient to fully repay the total deferral plus all the normal amortization that would have been scheduled during the fiscal year 1984 through the fiscal year 1985 period had no such deferral existed. It should be added that all deferrals must be fully repaid before any amortization can be made.

And then they set forth a table showing the planned repayments.

I might also indicate that the practice which the Senator has criticized and which the GAO criticized and which FERC criticized in their final order dated June 15, 1983, was nevertheless approved by the Congress of the United States in the appropriations process.

Mr. PROXMIRE. Let me also read another section of this report because this is their conclusion. They conclude:

We find that Bonneville's continued utilization of its present method to establish rates will ultimately result in the failure of Bonneville's rates to meet the statutory standards set forth in the Regional Act. Bonneville's practice of pushing its repayment obligations into the future has generated a bow wave of unpaid investment costs that are now approaching $1 billion with no apparent end in sight. Nonetheless, Bonneville has made no discernible effort to mitigate this increasing problem. Indeed, Bonneville's notice of proposed wholesale power rate of adjustment for its superseding rates estimates that the amortization schedule in fiscal year 1983 will be an additional $65 million below existing repayment schedules. It thus appears that the problem will only be exacerbated especially in light of the significant drop in the Bonneville system loads from the levels forecasted in the repayment study.

Mr. President, it seems to me that all of this indicates exactly why I think the Senate should insist that we have information from those who are interested in this matter, certainly from the Treasury, which we do not have on record in hearings, information from the bondholders, information from the banks, so that we can understand how we can work ourselves out of this multibillion-dollar problem rather than proceeding impetuously and on the basis of totally inadequate information and without the usual kind of hearing and committee report the Senate requires on matters that are far less important, that are trivial from a monetary standpoint compared to this.

Mr. President, the question here is, how in the world can we reasonably assign the responsibility of bailing out the WPPSS system to an agency like Bonneville that is already financially ailing itself and one that depends on the Federal Treasury and hidden costs to the taxpayers to keep its own head above water?

Not only is the amendment flawed but so is the process by which it became part of the Interior appropriation bill. Let me repeat what I have said repeatedly but I think it is worth emphasizing again and again. No hearings were held on the subject by any Senate committee. The amendment was rushed through the subcommittee and there was almost no information available on the amendment for members of the Appropriations Committee, and I am one.

Finally and worst of all, in their haste to pass this amendment, the proponents have jumped the gun on three separate GAO investigations of the Washington Public Power Supply System and its relationship to the Bonneville Power Administration, investigations which may bear directly on Bonneville's health and ability to take on the extra burden required by this amendment.

Now, why then the rush? Just Monday, Senator GORTON admitted that there is no way, and Senator McCLURE, as I understand it, said the same thing this morning, there is no way we can get this bill passed, get it through conference and finish it before we recess.

Given this impossible time crunch, does it not make more sense to wait until the Senate Energy Committee has had its hearing on the subject? That is less than an hour from now.

Speaking of the hearing, why was it scheduled for Wednesday if the Senate was to vote on the amendment on Monday? That timetable makes no sense to me.

Chairman McCLURE told us yesterday that all interests in the Northwest were solidly behind this amendment. That is hardly the case. For example, both the Public Power Council, which represents the Northwest publicly held utilities——

Mr. McCLURE. Would the Senator yield for ——

Mr. PROXMIRE. I will in just a moment—and the Progress Under Democracy group, which includes the major ratepayer action groups, have gone on record against this.

I am happy to yield to my friend.

Mr. McCLURE. Would the Senator yield? I think the Senator misrepresented what I said yesterday or perhaps misunderstood what I said yesterday. The question had come up about consensus in the Northwest with respect to this proposed amendment, and I outlined what the consensus was. I did not say there was no dissension or that there was no disagreement in the Northwest. I would hope that the RECORD could be corrected to reflect that. If the Senator would like to look back at the RECORD as to what I said yesterday, I would be happy to have him do so, but I hope he will take a look at the RECORD for what was said yesterday.

Mr. PROXMIRE. Of course, I know the intentions of my good friend were excellent, as they always are, but I

stand by the fact that there is substantial opposition in the Northwest.

Mr. McCLURE. But the Senator did not say there was not.

Mr. PROXMIRE. I do not know what the Senator means by consensus. When you have the Public Power Council, which represents the Northwest utilities——

Mr. McCLURE. Would the Senator like to look back at the RECORD yesterday as to what it was I said?

Mr. PROXMIRE. The Senator just now said there may be some dissent here and there.

Mr. McCLURE. I said that yesterday.

Mr. PROXMIRE. Maybe some dissent. I am saying there is not any consensus in the Northwest.

Mr. McCLURE. Then do not represent to the Senate that I said something which I did not say.

Mr. PROXMIRE. What I am saying to the Senator in this Senator's view is not a misrepresentation.

Mr. McCLURE. It is a misrepresentation of what I said. It may not be——

Mr. PROXMIRE. The Senator just this minute indicated—now, maybe I misunderstood. Is the Senator telling me there is no consensus in the Northwest behind this position?

Mr. McCLURE. No, I am not, but I did not yesterday say there was no disagreement and the Senator is saying that I said yesterday there was no disagreement in the Northwest. I did not say that.

Mr. PROXMIRE. All right. Let us assume for a minute that the Senator may be correct about what he said yesterday. Let me ask, did the Senator say today that there is a consensus; in other words, a general support among interested parties in the Northwest for his position?

Mr. McCLURE. I did not represent that there was no disagreement in the Northwest, and I do not believe I said that there was a consensus in the Northwest to do this in the terms that the Senator has now stated.

Mr. PROXMIRE. I am just trying to find out what the situation is.

Does the Senator agree with this statement: That the Public Power Council, which represents the Northwest publicly held utilities—a big group and an important group—and the Progress Under Democracy group, which includes the major ratepayer action groups, have gone on record against this amendment? Is that true or false?

Mr. McCLURE. I do not know about the second group to which the Senator refers. I do know about the Northwest Power Council, which adopted a resolution of qualified opposition.

Mr. PROXMIRE. I thank the Senator.

The Public Power Council's resolution opposes:

Any congressional action until the ratepaying public has had sufficient input into the process and until the Public Power Council's Executive Committee has sufficient information to determine the legislative course of action that is in the best interests of the ratepayers of the region's consumer-owned utilities.

Members of Progress Under Democracy were even more direct. I will read their letter. This is a letter to Senator JACKSON, dated July 26.

The Executive Committee of Progress Under Democracy and the below-listed ratepayer leaders of Washington State urge you to withdraw the "WPPSS Rider" (Sec. 317) that has been attached to the Interior Appropriations bill at the urging of the four investor-owned-utilities who own a 30% share of WPPSS project No. 3.

We feel the authority granted by this proposed amendment is contrary to the best interests of local public power in Washington state and would be a considerable detriment to the ratepayers of this state and the entire Northwest region.

This amendment represents an effort to circumvent all the existing legal, market, regulatory and political safeguards that have thus far protected people in the Northwest from a no-holds-barred assault on their incomes.

Legally, this amendment tries to guarantee that public power ratepayers will pay any debt Bonneville has incurred or will incurr even if its net-billing arrangements are found invalid and illegal, as well they may be in light of the Washington State Supreme Court decision on WPPSS projects 4 and 5.

Market-wise, despite the best efforts of these private utility companies, no investors will lend them money to complete this WPPSS project #3. The risk is too great! This amendment would force public power ratepayers to take the risks the bankers will not take . . . on behalf of their stockholders. The financing of WPPSS #3's completion is not only cost-effective, but the fuel-loading of WPPSS plant #2 has absolutely no economic rationale in a time of energy surplus and Bonneville revenue short-fall.

Regulation of the investment practices of private electric monopolies, like Puget Sound Power & Light Company, is properly under the jurisdiction of the Washington Utilities and Transportation Commission. This amendment attempts to circumvent this regulatory protection and dump the nuclear mistakes of private utility companies on the region's public power ratepayers. If Congress establishes that ratepayers of federal based systems can be thrown into the breach to protect private utilities from the consequences of their own bad judgement and the realities of the marketplace, these four companies will only be the first in line to get their piece of the bail-out.

Politically, the public in the Northwest region has succeeded in stopping payment on the blank check WPPSS was using. Now Congress, via this Rider, is proposing to issue another blank check in our names. However perverted WPPSS may have become, some political reigns remained in the hands of local PUDs where people in November, 1982, did choose new leaders committed to ending the WPPSS fiasco. This amendment would move the power to incur debt to a level where people can't reach it—though they will still be getting the bills.

Let WPPSS, BPA and the IOU's make their case to the Northwest and its ratepayers. If the plants can be justified, we will build them. If they can't make their case to the courts, the ratepayers and the bankers, then Congress should not lend itself to the secret business of overriding democratic decisions in favor of Puget Power's balance sheet.

We urge you again to withdraw the rider.

(Mr. HUMPHREY assumed the chair.)

Mr. RIEGLE. Mr. President, will the Senator yield at that point for a question?

Mr. PROXMIRE. I yield.

Mr. RIEGLE. I think the Senator is performing a valuable service by raising these questions.

In referring back to the Chrysler legislation which was before our Banking Committee, there were a number of specific requirements. The situations were different, but there are important similarities.

For example, there was a new management team that had come in, in the case of Chrysler. We insisted that if there was going to be any Federal involvement, the Federal Government, or anything it was associated with, stand first in line in terms of any final claim on assets, in order to restore the position of the Government.

We required reductions in the salaries and in the expenses for white collar management personnel as well as for labor. We put the warrants in, so that if there were a turnaround in the situation, there would be a public gain.

As I listened to the Senator raise a number of points—and I share his concern about it, I do not see here where there is anything—in the absence of hearings which have not taken place—there is nothing like the more severe effort to try to move in that direction, if Congress is going to act.

I ask the Senator: It appears to me that the kinds of normal safeguards we should be insisting upon in a case such as this, if we are going to be involved—and I am not convinced that we should be—but I do not see in this instance the safeguards we have insisted on.

I am delighted that the Senator raises these questions. He is absolutely right.

He is familiar with the problems we had with Chrysler, New York City, and Lockheed. In the first place, they were elaborate hearings. We had many days of hearings on Chrysler. We had the administration testifying. We had the Chrysler management testifying. We had the labor unions testifying, Mr. Frazer testifying. We had outside experts testifying on both sides. The Senator is right.

Mr. PROXMIRE. The Chrysler creditors, in some cases, had to take 30 cents on the dollar. They took a beating. In other cases, they were given

preferred stock which paid no dividends for some time.

The management agreed to a cut, and the union agreed to a very sharp cut. As a matter of fact, they are still making $2 an hour less than the people who work for General Motors and Ford.

Mr. RIEGLE. That is right.

Mr. PROXMIRE. So very deep sacrifices were made by a whole series of people in the Chrysler matter.

In the Lockheed matter, the sacrifices were just as great.

In the New York City matter, we froze wages for a period of years, and most of the money made available to New York City was from the pension fund of the New York City workers, who put their pension at risk.

As a matter of fact, the Senator from Wisconsin disagreed with the outcome in both cases, and I opposed those bailouts.

In this case, there is a world of difference. In those cases, we had an excellent, thorough, documented, detailed, painstaking record. In this case, we have nothing, not 1 minute of hearing. There is one going on this afternoon, but a number of important parties will not have an opportunity to make a representation at all.

Mr. RIEGLE. I think the concerns the Senator is raising are important, because if the management that obviously made some serious errors of judgment is going to remain in place, if there is going to be no sacrifice in terms of scaling back compensation for the people involved, if there is not going to be some additional sacrifice by everybody connected who has a financial interest in this, which is a pattern we have seen in other instances where we have been involved, then I do not think we should be going into this.

We should help as a last resort, after everybody else who has had a part in these decisions, which were wrong decisions, unless those parties are willing to bear a disproportionate share of the responsibility.

Should we not get a new management team? We had a new management team in Chrysler. As a matter of fact, I am not sure that many of us would have supported providing the help, with all the caveats, had there not been a new team put in place. And that team has been successful.

Is there a new management that has been put in place here?

Mr. PROXMIRE. I am not sure about that.

Mr. McCLURE. Mr. President, will the Senator yield?

Mr. GORTON. Mr. President, will the Senator yield?

Mr. PROXMIRE. I will respond to my friend first and then I will yield to the Senator from Idaho and the Senator from Washington.

Let me say that the Senator is correct here, but I think the fundamental problem, as I tried to say at the beginning, is the problem of procedure. It is a problem. We usually neglect the procedure. What we have overlooked is the fact there has not been an opportunity to work all this out in hearings.

There are no two more able Senators than the Senator from Idaho and the Senator from Washington, the two men in the Chamber here. They are extremely able.

They come up and they give us all kinds of plausible answers, but we are working in the dark.

We do not have a record. We do not have hearings. In the Chrysler case we had a volume that high. We had gone into it on both sides of the aisles. We had people who not only were from the particular area involved who were informed, but the entire committee was informed. We had days to study those hearings.

In this case, we come in and the Senator form Idaho puts in an amendment. Now he cannot understand why I will not let it go ahead. I wish to study it. I wish to have an opportunity to have some opinion by a committee which had a chance to take their time and look at it, examine it, tell us what is right and wrong about it, and give us their recommendations.

Much as I admire and respect the great intelligence and integrity of the Senator from Idaho, even he is not going to be a guru for me. I am not going to be in the position of rubberstamping anything JIM McCLURE says, although I love him like a brother.

Mr. McCLURE. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield

Mr. McCLURE. I am glad I am not his brother, if the Senator will yield under the same terms and conditions.

Mr. PROXMIRE. I yield.

Mr. McCLURE. Mr. President, I wish to respond to what the Senator from Michigan has said, and I agree with the Senator from Wisconsin when he said there is a world of difference between this situation and Chrysler, Lockheed, and New York.

The reason why—and if I might have the attention of the Senator from Michigan—he suggested that in each of those instances we demanded concessions. We did indeed because the full faith and credit of the United States was involved in each of those instances.

Under the current law, as well as the pending amendment, it is clear that there is no full faith and credit of the United States involved, and that is a world of difference between this and the other situations.

With respect to the second question, that the Senator from Michigan raised with respect to——

Mr. RIEGLE. The Senator is listening.

Mr. McCLURE. I know he has two ears.

Mr. RIEGLE. He is listening intently with at least one ear to the Senator from Idaho.

Mr. McCLURE. I appreciate that.

With respect to the second question is there new management, absolutely and clearly there is new management that has been in effect. When these cost overruns and the mismanagement became effective, when the new administrator of EPA was appointed, he seized control of this, got new management appointed to look at it, and I think the Senator would be pleased that the new management that was in charge of the construction on No. 3 we can say are ahead of schedule and below target since that changed took place.

Mr. RIEGLE. Just on that point, if the Senator will yield, when he says there is new management, do I take it to mean that the chief operating executives, the principal operating managers of the business, possibly including people on the board of directors, have been replaced, that there has been a wholesale movement out of the old leadership and a brand new team is put in place? Is that what the Senator is saying?

Mr. McCLURE. The management team for the construction was completely replaced. As a matter of fact, Mr. Curtis, who has just recently resigned from that position, worked so hard at it that he had a heart attack.

Mr. RIEGLE. I am not referring to the construction phase. I am talking about the operating executives of the company as a whole, the persons who would be the chief operating officer and the immediate lieutenants. I am talking about the top high command of the entire entity.

Mr. McCLURE. In a moment I will yield to the Senator from Washington who can respond to that, but the Senator confuses this situation, because this is not an operating company in any kind of a normal sense of that term at all. This was one of its orginal problems. But the man who is responsible for the operations, the man who was the supervisor of the operations, was replaced and since that has happened, the entire tone and tenor of management changed and the construction project and cost of construction changed dramatically with new managment.

Mr. PROXMIRE. Mr. President, I am going to exercise my right to hold the floor to say this exactly demonstrates why we should have hearings on this because the new administration of Bonneville, who was a political appointee, was not like Lee Iacocca, who was one of the most brilliant, outstanding auto executives in the country. Everyone knew that he had a terrific work record at Ford when he

went over to Chrysler. But a new political appointee has taken the same old position, "Eventually we will pay it back."

Mr. McCLURE. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. McCLURE. That is a totally different question than the one posed to us by the pending amendment.

I read this earlier, but the Senator from Michigan was not then in the Chamber, and I think the Senator from Michigan also wishes information. I shall read again the provision of the statute that is again confirmed and restated in the pending amendment.

All contractual and other obligations required to be carried out by the Administrator pursuant to this Act shall be secured solely by the Administrator's revenues received from the sale of electric power and other services. Such obligations are not, nor shall they be construed to be, general obligations of the United States, nor are such obligations intended to be or are they secured by the full faith and credit of the United States.

That is current law, and I suspect that had we tried to get a Chrysler bailout with that kind of language we would have gotten no money at all.

It was because the full faith and credit of the United States was involved that we had all the meticulous hearings and the tremendous record to which the Senator from Wisconsin makes reference.

Mr. RIEGLE. Will the Senator admit there are financial implications in this decision for the Federal Government?

Mr. McCLURE. Absolutely not, zero, not 1 penny.

Mr. RIEGLE. There is a strong difference of opinion on that.

Mr. McCLURE. There is not a strong difference of opinion. I wish to have someone state that there is. No one yet has stated that there is. There has not been one word of debate in this Chamber that says that that is true, none.

Mr. PROXMIRE. Mr. President, the difficulty is that the amendment the Senator is offering on full faith and credit is the same language in place now. We still are not getting paid back. That is not going to do it.

Mr. McCLURE. If the Senator will yield further, under the same conditions, again the issue to which he makes reference has to do with repayment of existing obligations that have arisen from two sources, as I have repeatedly stated in the past. One is the assumption of the responsibility to pay back that portion of the projects in the Northwest which are attributable to power production and therefore are repayable to the Treasury band, second, the amount of money that has been appropriated for Bonneville's use with respect to transmission.

Those are the elements of indebtedness that Bonneville has which they must repay.

The fact that they are behind on their payment schedule is something that this Congress has ratified. It was done in the committee of which he is a member, it has been passed in the Senate of which is a Member, it has passed in the other body to which he made reference, and it has been signed into law by the President.

So the Senator may criticize that process but do not make the assumption nor make the representation that it is done by slight of hand or trickery, that Congress has no control over it.

Mr. RIEGLE. Mr. President, will the Senator yield for a specific question along that point?

Mr. PROXMIRE. I yield.

Mr. RIEGLE. Mr. President, I appreciate the Senator letting me get into this discussion with him. I think he is performing an important service to the Senate.

I am led to understand that the power authority now owes the Treasury nearly $8 billion.

I ask the Senator is that correct?

Mr. McCLURE. Excuse me. I was distracted. I did not give the Senator one ear, and I apologize.

Mr. RIEGLE. I understand the power authority now owes the U.S. Treasury nearly $8 billion; is that correct?

Mr. McCLURE. I cannot confirm the exact amount of money.

Mr. RIEGLE. It is a lot of money, at the rate of $8 billion, several billions of dollars.

Mr. McCLURE. Yes, for all of the power features in the Northwest dams, for which they are the marketing agent for the power, and for the transmission lines that they built pursuant to appropriations acts.

Mr. RIEGLE. This is what I am told with respect to that debt. Much of that money carries interest rates below 5 percent. I understand it has paid back only $638 million which would be less than 10 percent of what is owed. The last decade it has paid only $42 million in payments and it apparently has made no payments in the last 3 years. And according to the Federal Energy Regulatory Commission these delayed repayment practices have cost the taxpayers $740 million to $1.4 billion.

As I understand it now we are talking about adding another $1.4 billion to the power authority's debt obligations and because of the Federal Energy Regulatory Commission's rule, the son of WPPSS would be paid off before the Federal Treasury and thus the taxpayers of the United States will forgo additional billions of dollars owed to them under the law in order to subsidize the construction of nuclear powerplants that many think are not needed.

Why are not the financial relationships connected in this way, and does it not create—why are we here on the floor then and why have we not been able to go through the hearing process? I mean, what is the rush here when we have been doing this for decades? Why can we not have a hearing record?

Mr. McCLURE. Mr. President, will the Senator yield under the same terms and conditions as previously set forth?

Mr. PROXMIRE. I yield.

Mr. McCLURE. Let me respond to the Senator from Michigan, if I may. I do not want to deprive the Senator from Wisconsin of any of the time to which he is entitled. I thought I was depriving him of that time.

Let me respond to the Senator from Michigan. First of all, these facts you have set forth in your statement have been mentioned four or five times in debate over the last 2 days. I will give you the same answer now I gave before, and that is yes, indeed, there are obligations Bonneville has. Those obligations are because of the repayment of the power features in dams constructed by the Federal Government, the power from which is marketed through the Bonneville Power Administration through the customers it has.

Second, because of the debt incurred because of the construction of transmission facilities, again money which was appropriated by the Congress of the United States for that purpose and which must be repaid by Bonneville Power Administration as it collects revenues from the people who buy the power, that come from those projects and there on through those transmission lines to the consumers in the Northwest.

Why, as a matter of fact, are they behind? Well, there has been an economic recession in the country. The Senator from Michigan is familiar with that. The State of Michigan has been afflicted by it. The States in the Northwest——

Mr. RIEGLE. Mr. President, if the Senator will yield, it is fair to say this problem was way beyond that. The Senator is talking about a situation here of financial insufficiency that goes beyond anything else in the country. It does not even touch it.

Mr. McCLURE. If the Senator will permit me to answer his question, I will try. It does not—the Senator is wrong. As a matter of fact, as I said before in respect to the statement of the Senator from Wisconsin, the fact that there have been deferrals of repayment has been approved by the Congress of the United States. Second, the question of the rolling maturities is a practice which has been going on for 20 years, even before you and I got here, Senator. That has been in effect

ever since then and approved by Congress in appropriations acts in the past.

Mr. RIEGLE. I am just referring to the default.

Mr. McCLURE. Excuse me.

Mr. RIEGLE. I was just referring to the default. I know of no equivalent default of this size.

Mr. McCLURE. Which default is the Senator referring to?

Mr. RIEGLE. I am referring to the default we are dealing with here.

Mr. McCLURE. Which default is the Senator talking about? If he would be a little more precise I could——

Mr. RIEGLE. Units 4 and 5.

Mr. McCLURE. Units 4 and 5 are not affected by this amendment. Bonneville Power is not involved in 4 and 5. Four and five defaults are defaults of the Washington Public Power Supply System and have nothing at all to do with this amendment or this issue on the floor at this time. It is that kind of misconception with which I am struggling.

Mr. RIEGLE. The Senator is not saying what we are considering here would not in any way touch the bondholders of units 4 and 5?

Mr. McCLURE. It cannot affect bondholders of units 4 and 5, possibly affect them. It might possibly enhance WPPSS asset value, which would be of benefit to the bondholders of 4 and 5, but could not possible affect them.

I made some comments earlier when the Senator was not on the floor in respect to the GAO report which was issued on August 2, which points out again that the Bonneville Power Authority is required to have a sufficient rate structure to collect revenues sufficient to pay its obligations. I referred to the FERC order earlier this year that approved the past revenue structure of Bonneville, and I referred to the fact there is a pending case before FERC with respect to future rates to be charged to customers in which rate application Bonneville has represented to FERC they intend to catch up the amount that has been deferred in 1983 and 1984.

Mr. PROXMIRE. Let me just say to the Senator from Michigan, because it is on the very point he is raising, that I would disagree with my good friend from Idaho here. The amendment may—and that is the reason I think we should have hearings—it may cut off the rights of bondholders of units 4 and 5.

Mr. RIEGLE. I mean the Senator from Idaho cannot make a declarative statement about it. I understand that issue has been tested in the courts.

Mr. McCLURE. Mr. President, will the Senator yield? With respect to the bonds issued for units 4 and 5, whether or not they could reach back to the assets created in the issuance of bonds for 1, 2, and 3, that is before the courts and has not been resolved.

Mr. RIEGLE. That is exactly the Senator's point

Mr. McCLURE. Let me complete my answer, if the Senator will, and that is even if they can look through to those assets that are held by WPPSS or obligated under the contracts with BPA they can only be helped by the completion of the construction of those assets. They cannot adversely be affected, and if they are unsuccessful in their current suit, saying they cannot reach back to 1, 2, and 3, they are totally unaffected.

Mr. PROXMIRE. Mr. President, will the Senator yield? I am getting more and more concerned about the health of the Senator from Idaho, and I will tell you why. He has a hearing in about 24 minutes. He obviously has not had a chance to have lunch. He has been on the floor all this time, and I hope he can give all his attention and great enegy to that hearing. So I hope the Senator will take advantage of the next 24 minutes so that I can engage in a colloquy with the Senator from Washington.

Mr. McCLURE. I appreciate the Senator's concern. I thought I would go down and have some milk and cheese.

Mr. PROXMIRE. Does the Senator know that 40 percent of all the cheese in this country is made in Wisconsin?

Mr. McCLURE. Subsidized by the taxpayers of the United States in the great bailout of the dairy industry.

Mr. PROXMIRE. The Senate dining room has no subsidy for the moment.

May I say to the Senator from Washington, I would like to finish just one short paragraph because it is signed by some of his most distinguished constituents. It says:

> Let WPPSS, BPA, and investor-owned utilities make their case to the Northwest and its ratepayers. If the plants can be justified, we will build them. If they cannot make their case to the courts, the ratepayers and bankers, then Congress should not lend itself to the secret business of overriding democratic decisions in favor of Puget Power's balance sheet.

That is signed by people from Wenatchee, Seattle, Olympia, Lynnwood, Ellensburg, Raymond, Shelton, Matlock, and Longview, all wise and distinguished citizens of Washington who are the Senator's constituents.

Mr. GORTON. The Senator from Washington fully agrees with the sentiments expressed in that letter. The Senator from Washington agrees that no construction should go forward unless it is very substantially justified, unless it represents a broad consensus of the people of the State of Washington and of the various power entities which serve them, not simply investor-owned utilities but publicly owned utilities as well.

The Senator from Wisconsin should know that nothing in the amendment, the principal amendment, the committee amendment, which is before the Senate at the present time directs that the construction of unit 3 continue. It simply sets up a framework within which it can continue.

At the present time without any authority from the Congress at all, the Washington Public Power Supply System has legal authority to borrow the roughly $1 billion necessary for completion of unit 3. But, of course, because of the default of the Washington Public Power Supply System in connection with bonds on units 4 and 5, bonds not related in any respect whatsoever to the Bonneville Power Administration, the Washington Public Power Supply System is unable to borrow $1.15 much less close to $1 billion.

Mr. PROXMIRE. I might say to the Senator that in this letter from his constituents they said:

> The Executive Committee of Progress Under Democracy urges you to withdraw the WPPSS rider, section 317, that has been attached to the Interior appropriations bill.

They want it withdrawn, and that is why I am up here speaking, and I agree with them.

Mr. GORTON. If I may comment both in answer to the question from the Senator from Wisconsin and certain of the quite sincere and valid questions on the part of the Senator from Michigan, I doubt that even after a somewhat extended period of time we will ever have a 100-percent agreement in the States of Washington, Oregon, and Idaho about the completion of unit No. 3 or, perhaps, unit No. 2. Some of the members of some of the organizations to which you refer are simply opposed to the use of nuclear power at any place under any set of circumstances. Other constituents of mine at the present time still have a contingent liability or fear they may have some liability for obligations in the aborted construction of WPPSS unit 4 and WPPSS until 5. Some of them have an unstated agenda, I may say to the Senator from Wisconsin, an agenda with which he would not agree.

Some of them wish to hold the full construction of WPPSS 3 captive until it is clear that they are relieved from all of their obligations to pay bonds for WPPSS units 4 and 5; that is to say, they want a Federal bailout of bonds which have now been largely repudiated but about which there is still additional litigation, litigation which will go on for an extended period of time.

The Senator from Idaho, this Senator from Washington, and my colleague from Washington, Senator JACKSON, have consistently told our constituents that we cannot, under any set of circumstances, pass a bailout for the Washington Public Power Supply System. We cannot get Federal appropriated money into that system,

either for the completion of WPPSS 3 or in connection with the bonds for WPPSS units 4 and 5.

What we can do, however, is to highlight, is to pinpoint the debate within our own region on the single live issue in which Congress can, as a practical matter, do anything. And that question—a question on which there is not entire unanimity in the region, but which I think there is substantial agreement—is whether or not, having invested several billions of dollars, somewhere between $3 and $4 billion, in Washington Public Power Supply System Unit No. 3, which is now almost 80 percent complete, it is better to invest an additional $1 billion, or slightly less than that, and complete that unit so that it is producing power, so that it is capable of generating some income, or whether it is now better to abandon that process to pay off the $4 billion which has already been put into it, the debt service of which we are now paying in our rate structure through the Bonneville Power Administration.

Now I would have to admit that I will never be able to secure the assent of 100 percent of the people of the State of Washington, even to going forward under those circumstances. I will submit quite sincerely to the Senator from Wisconsin and the Senator from Michigan, however, that almost any economic, any valid, any objective economic analysis would indicate that we in our region are far better off to proceed and to finish that single unit, whatever happens to unit No. 1, whatever happens to unit Nos. 4 and 5, than to be stuck with an indebtedness of several billion dollars for something which will never produce money at all.

Even so, and even if we pass this amendment, we do not guarantee that construction will continue on unit No. 3. That will still be a decision which must be made in the region which I represent. But we should have and we are asking for the ability to make that decision where we live. That is all we are asking for here—the ability to have this debate go on, the ability to make that decision, the ability to answer that question in the affirmative.

The Senator from Michigan asked—and I think he asked very legitimately—whether or not we were not just going on with a highly inefficient construction program, which marked the first several years of the Washington Public Power Supply System. He asked whether or not we had new management. He asked, in effect, is this money going to be wasted to the same extent that much of the other earlier money is going to be wasted. And that is an extremely legitimate question.

Mr. PROXMIRE. And it is a question on which we should have hearings and we should have a record and we should have information. We should not have a situation in which eloquent and popular Senators, like the Senator from Washington, arrive on the floor and carry the day because everybody loves them. We have Senators, Republicans and Democrats, who are for this, for understandable reasons, and they win. I mean, that is no secret. They will always win under these circumstances.

What we are pleading for is an opportunity to have the facts first. That is what we want.

Let me just point out that Bonneville itself says they are in no hurry on this. They say there is nothing to be gained by rushing to finish WPPSS now. Even a 3-year delay, BPA says, will cost at most $100 million. Under some circumstances, longer delays could even break even. There is no reason to rush to resolve this except to accomplish a fait accomplish before the people in the Northwest have a chance to react.

Let me say this. According to Bonneville's own members, a delay in WPPSS 3 of 3 plus years will result in a savings to BPA because of existing large surpluses of power. So the only harm from delay is to the stockholders of many private utilities. The bondholders of BPA are protected. Their investment is guaranteed.

Furthermore, Bonneville can sell its surplus power to California in only limited amounts. BPA currently gets 9 mills per killowatt hour. This will not go up much due to competition from other sellers of electricity, yet it costs BPA at least 3.9 cents per kilowatt hour for generaton if it completes WPPSS 3. And since this is all surplus power, BPA will take a loss on the sale, if they can even sell it.

So what is the hurry? If you have an emergency situation where we have to act, then we should overrule our rules and permit legislation on an appropriations bill. We are rushing ahead now with an action here which we clearly do not need. I hope that the Senator from Washington will concede that is the case, will he not? Is BPA wrong?

Mr. GORTON. The Senator from Washington will be delighted to answer the question of the Senator from Wisconsin because, in many respects, it is identical to the question of the Senator from Michigan, which is put somewhat differently. But the Senator from Washington must continue along, at least for a moment, the train of thought in response to the Senator from Michigan.

Mr. PROXMIRE. How long does the Senator wish to continue? I have the floor.

Mr. GORTON. For 2 or 3 or 4 minutes.

Mr. PROXMIRE. Does the Senator from Michigan want to answer the Senator from Washington after those 2 or 3 or 4 minutes?

Mr. RIEGLE. If the Senator will yield to me for a moment, I have no desire to in any way harm the Senator's region or people in it.

Mr. GORTON. I understand the Senator.

Mr. RIEGLE. When Mount St. Helens erupted, I and others were among the first to want to respond directly and immediately with help, and we were prepared to reach in our pockets in Michigan to do so. So I have every interest and concern about the longrun well-being of the region and the people there.

I am not raising this from the nuclear power issue, either. That is not the issue with which I rise in terms of my concern here.

My concern is the financial implications. I am very much disturbed about the process and the procedure. I think it is an embarrassment, frankly, that we find ourselves here under this kind of legislative condition on a matter of this complexity, having to try to elicit information this way that is not available, for example, on the basis of a committee hearing or committee hearings or committee reports. We just do not have it. It is not the way to proceed on a matter of this magnitude. It is complex.

As the Senator from Wisconsin points out, there does not seem to be any emergency of the same sense that Mount St. Helens conveyed where we had an immediate requirement to respond, and did respond just about that quickly.

So it is within that framework that I raise these questions. And I want good answers. That is what I am after.

Mr. GORTON. The Senator from Washington recognizes and appreciates precisely that concern. One of the reasons that I have attempted to answer his questions is that I am——

Mr. PROXMIRE. Mr. President, I understand that I have the floor. I am happy to yield to the Senator. I ask unanimous consent that I may yield 2 minutes to the Senator from Washington to respond and then I am going to finish my remarks. The Senator from South Carolina has a statement he would like to make before 2 o'clock and I want to give him time to do that.

Mr. HOLLINGS. Will the Senator from Wisconsin yield?

Mr. PROXMIRE. Yes.

Mr. HOLLINGS. I do appreciate the Senator giving me that time, but on this particular subject I want to ask the Senator from Washington, if this goes through as a precedent, about the chances of a $750 million reprocessing plant in Barnwell, S.C. Since we are making the bailouts today, I am ready to answer any questions he wants. We have no hearing record on anything else, but, a la GORTON, I would now

propose to answer any questions he may want and urge, of course, his support for our $750 million reprocessing Allied-Gulf plant. Let the Government buy that one, too, if we buy WPPSS. Would the Senator go along with me on that?

Mr. GORTON. If the Senator from South Carolina is asking us to pass legislation which will permit the citizens of South Carolina to buy that plant for that amount of money, the Senator from Washington would be happy to support the Senator from South Carolina, because that is precisely what the Senator from Washington is asking. He is asking for my people to pay for their problem. He is not asking for help or taxpayer money from the Senator from South Carolina.

Mr. PROXMIRE. The Senator has got to be kidding. They really want to buy it? What do they want to buy, No. 4 or No. 5? They are just dying to buy it. Talk about a turkey.

Mr. GORTON. Has the Senator from South Carolina made the statement he wanted to make?

Mr. HOLLINGS. That will be on a different subject, on Radio Marti.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Wisconsin? Without objection, it is so ordered.

Mr. GORTON. All I need to say to the Senator from Michigan is that I gather we will have sufficient additional time in the future.

I did want to answer the question at least to the point of dealing with management. It is very clear that Washington Public Power's management of the construction of these five plants was extremely negligent, that a great deal of money was wasted, that many of the problems faced by our citizens today are due to that mismanagement and waste. It is, however, to the credit of the people of my State and to my legislature that at least 2 years ago that supply system was totally reorganized, that it received a new managing director, which is the equivalent of a corporate seat, at the very top management, Mr. Ferguson, to whom the Senator from Idaho referred.

It is true that after that period of time, during the course of the last 2 years, the plant which is primarily under discussion here, Washington Public Power Supply System Plant No. 3, has been constructed at a pace by which it was ahead of schedule and under budget. Still, a great deal of money was wasted on that before this change in management. But the present management of that process has been exceedingly efficient, has been a model, in fact, for all such construction projects in the United States. A large portion of the emergency with which we deal today is the fact that if we just close it down and start up again in 3 years, we will lose that ability and a great deal of money. I thank the Senator for yielding.

Mr. PROXMIRE. I thank my friend. I will not yield further. I want to finish up.

Influential members of the other body also oppose this amendment. The chairman of the House Energy and Commerce Committee has indicated that he will fight this provision if it remains attached to the Interior bill. He and the chairman of the Subcommittee on Conservation and Power have both "questioned the bill's attempt to limit the rights of prior WPPSS creditors." They worry that such limitations "could raise constitutional issues similar to those which arose over Penn Central legislation a decade ago, and could result in Federal taxpayers assuming the financial liabilities."

Even members of the House delegations from Washington and Oregon have contacted my office to declare their independence from this amendment. The most vocal of the group, Congressman WEAVER of Oregon, has raised a series of interesting questions about the implications of this amendment which deserve answers from this committee. I will not ask them all—they are too long and detailed. But review of even a few will indicate how many ambiguities and even genuine mysteries surround the words of this amendment.

For example, he questions whether any new entity, or a super-WPPSS, setup to continue construction on plants 1, 2 or 3 could issue tax-exempt bonds. According to the Congressman, a 1972 IRS ruling might limit the super-WPPSS to issuance only of taxable bonds. This would increase the cost of completing the projects and such bonds would have little appeal.

Does the amendment allow super-WPPSS to complete plant 1 as well as plants 2 and 3? The scope of the amendment is unclear on this point—a $2.5 billion difference of opinion.

Who would buy the super-WPPSS bonds? Although bonds for plants 1, 2, and 3 are already guaranteed by Bonneville, there are no takers on Wall Street. Why would super-WPPSS securities be any more attractive to investors?

Would super-WPPSS bond holders have rights superior to those of the U.S. Government if Bonneville cannot raise its revenues fast enough to pay off its new debts?

These are just a few of the questions raised by Congressman WEAVER. Unfortunately, I have seen no answers.

Congressman WEAVER is not Bonneville's only critic. Bonneville's wholesale rate schedules must be approved in proceedings of the Federal Energy Regulatory Commission. In a recent (June 15, 1983) order, the Commission criticized Bonneville for its financial methods.

According to the Commission, Bonneville, in repaying the Treasury, has developed "a practice of deferring or ignoring repayment of principal whenever it fails to recover those amounts over the effective period of its rates. Thus, when Bonneville is unable to collect sufficient revenues to meet payments to the U.S. Treasury over an effective period, Bonneville makes no attempt in the succeeding period to bring its repayment of the project investments back on a reasonable schedule. Instead, Bonneville prepares a new repayment study which assumes that the investment on the books at that time will be repaid over the remaining term left in the repayment period. This practice has the effect of continually pushing Bonneville's repayment obligation to future ratepayers. The ultimate result of this practice is to generate a bow wave of unpaid investment costs which are continuously deferred with an ever-increasing level of annual payments required with each succeeding rate filing.

According to the Commission for 1982 alone, Bonneville failed to repay interest and principal owed to all of us of over $286 million. And this is just for 1 year; 1983 is expected to be much worse. Based on the straight line amortization method, right now Bonneville's repayment is behind by $1.4 billion.

Has Bonneville made efforts to reduce this drain on the Treasury? Quite the contrary. According to the Federal Energy Regulatory Commission, Bonneville is getting worse. Their conclusion, Bonneville has made no discernable effort to mitigate this increasing problem.

And this is the same Bonneville that is pledging its assets to super-WPPSS. If Bonneville has to incur even more high-cost loans as a result of this amendment it will simply pay back the U.S. taxpayers at an ever decreasing rate.

The Interior Appropriations Subcommittee insists that this bailout plan requires no Federal expenditures. If all goes perfectly, that may turn out to be true. But this plan is like a blank check for Bonneville Power. If it needs more money for WPPSS, it can first raise rates to consumers until they will pay no more. Then, it can simply decline to repay the Treasury and reschedule its debts until BPA itself goes completely out of control.

The Interior Subcommittee's plan is no more than a gamble that BPA will suddenly learn how to keep WPPSS's house in order when it cannot even control its own finances. And if this plan is adopted, and BPA fails, all this will come falling down on—guess whom—the Federal Treasury and the taxpayers. Then we will be asked to bail out Bonneville Power, WPPSS,

and the entire house of cards that the Interior Appropriations Subcommittee has constructed.

Mr. President, there is no consensus here. If we want to act, we need to bring together all the players in the WPPSS debacle—the bondholders, the investor, and publicly owned utilities, the bankers, and the ratepayers. This amendment, now, will only make matters worse. I resent it being rammed down our throats without even as much as a hearing to air all the issues behind it. I urge that we reject the amendment.

Mr. DOMENICI. Mr. President, I commend my distinguished colleagues, Senators HATFIELD and MCCLURE, and my fellow members of the Senate Appropriations Committee for reporting this bill.

I support the Interior appropriations bill—H.R. 3363—as reported by the committee.

H.R. 3363 appropriates $7.6 billion for Interior and related agency programs.

The bill, with a possible later requirement for the forest firefighting program and outlays from prior appropriations, is $0.5 billion in both budget authority and outlays below the subcommittee's 302(b) allocation under the first budget resolution.

With respect to the credit budget, the reported bill is consistent with assumptions in the first concurrent resolution on the budget. There is minimal credit activity for programs in this bill.

Mr. President, I ask unanimous consent that a table showing the relationship of the reported bill, together with possible later requirements to the congressional spending budget and the President's budget request, be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

INTERIOR AND RELATED AGENCIES SUBCOMMITTEE SPENDING TOTALS—SENATE-REPORTED BILL

[In billions of dollars]

	Fiscal year 1984	
	Budget authority	Outlay
Outlays from prior-year budget authority and other actions completed		3.4
H.R. 3363, as reported in the Senate	7.6	5.3
Possible later requirements: Forest firefighting	+.1	+.1
Adjustment to conform mandatory programs to 1st budget resolution assumptions	+(1)	−.1
Subcommittee total	7.8	8.8
Subcommittee 302(b) allocation	8.3	9.3
House-passed level	8.6	9.3
President's request	6.6	8.3
Subcommittee total compared to:		
Subcommittee 302(b) allocation	−.5	−.5
House-passed level	−.8	−.5
President's request	+1.1	+.5

[1] Less than $50,000,000.

Note: Details may not add to totals due to rounding.

Mr. PROXMIRE. Mr. President, I see there are only a few minutes left before 2 p.m. I know the Senator from South Carolina is very anxious for me to yield.

Mr. METZENBAUM. Will the Senator yield me 10 seconds?

Mr. PROXMIRE. Yes.

Mr. METZENBAUM. I take this opportunity to commend the Senator from Wisconsin for a magnificent statement in connection with the issue pending before us. As usual, he has clarified the issue, laid it out, so that all of us might understand it full well. I think maybe it will edify some of our colleagues in the Senate.

At the same time, I would like to compliment my good friend from Michigan who has also added to the discussion and dialog on this issue. I thank both of them very much.

Mr. PROXMIRE. I thank my good friend from Ohio. I yield the floor.

Mr. HOLLINGS. I thank my distinguished colleague from Wisconsin for making this time available.

RADIO MARTI

Mr. HOLLINGS. Mr. President, as a cosponsor of the Radio Marti bill (S. 602), I am concerned that the ramifications of the amendment proposed by the distinguished Senator from Nebraska (Mr. ZORINSKY) have not been made clear. My colleague says that it merely authorizes the U.S. Information Agency to provide radio broadcasting to Cuba through the VOA. The tendency is to think, "Why create another bureaucracy when we already have the VOA?"

Since 1972, I have been a member of the Commerce, Justice, State, the Judiciary Appropriations Subcommittee that controls the funding of both the Voice of America as well as the Board for International Broadcasting. For 4 years I chaired that subcommittee, and for the last 3 years I have been the ranking Democrat. The intervening 11 years of uncounted hearings on regular and supplemental budget requests have given me an understanding of these programs. From that long experience I can tell my colleagues that they are confusing the medium with the message in thnking that the Zorinsky amendment is an improvement.

To put it as simply as I can, the Voice of America was created as a "Window on America" through which the world could observe life in the United States. Over the years we have fought to preserve the credibility of the VOA so that the world could expect to receive authoritative news, and first-rate programing from the United States.

VOA was not established to be a surrogate broadcaster such as Radio Free Europe or Radio Liberty, whose role is to tell the people behind the Iron Curtain the news of what is occurring in the Communist countries. To assign VOA a surrogate role would violate the spirit of the VOA Charter granted by Congress in 1976. Congress appreciated the difference in roles by creating the Board for International Broadcasting to oversee the surrogate radios, but the VOA was never considered in the same light.

The proponents of the Zorinsky amendment claim that putting Radio Marti within the VOA would save money. The VOA is already short of studio and office space for its current operations. Last Saturday the President signed the Supplemental Appropriations bill which contains a total of $19,800,000 to upgrade the VOA. Yesterday, Senator LAXALT on behalf of the Committee on Appropriations, reported the 1984 appropriations bill (S. 1721) which includes an additional $28,000,000 over the 1983 level, including the supplemental, to continue the modernization of the VOA.

Does that sound like an agency that has sufficient capacity to produce 14 hours of surrogate programing to Cuba? Certainly not! In fact, to take on the Radio Marti role, the VOA would have to increase its physical plant and editorial staff in direct proportion to that being proposed for Radio Marti.

Mr. President, the VOA in fact says "no appreciable dollar savings would be realized" by the U.S. taxpayer by putting Radio Marti into VOA according to a VOA statement. In that same statement, it was concluded that "the cost in terms of credibility among VOA's worldwide audience would be incalculable. We would be penny wise and pound foolish."

Finally, I understand that the supporters of the Zorinsky amendment have indicated that placing Radio Marti under VOA would be acceptable to Fidel Castro. That is the worst possible reason I can think of for the amendment. Under that kind of reasoning, we will soon have Andropov clearing our defense plans and policies.

I thank the distinguished Senator from Wisconsin for having yielded me this time.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CHILES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHILES. Mr. President, we are approaching a cloture vote, which I think will take place after the quorum call at 2 p.m. I think it is worth noting that we are dealing with the subject of the cloture vote, Radio Marti.

This is a subject that came up last year before the close of the session.

We had a number of days in which we were not able to get to the final vote on the question because we were held up with what was a filibuster then. The Committee on Foreign Relations has reported this bill on two occasions. The bill had been taken up in the House last year and was passed.

This year, a number of amendments have been added to the bill in the Committee on Foreign Relations to take care of problems that have been raised in connection with some of the frequency. We are now talking about broadcasting on a Voice of America frequency. I think that it behooves the Senate to adopt the cloture motion today and to cutoff debate. We have certainly had plenty of long debate on this. We should get to the merits of this bill.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 2 p.m. having arrived, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to the consideration of S. 602, an act to provide for the broadcasting of accurate information to the people of Cuba, and for other purposes.

Senators Jesse Helms, Paula Hawkins, Rudy Boschwitz, Slade Gorton, Steven D. Symms, Barry Goldwater, Orrin G. Hatch, Jeremiah Denton, Bob Kasten, Lawton Chiles, Paul Trible, Gordon Humphrey, John P. East, Dan Quayle, Robert Dole, and Frank H. Murkowski.

CALL OF THE ROLL

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair now directs the clerk to call the roll to ascertain the presence of a quorum.

The assistant legislative clerk called the roll and the following Senators answered to their names:

[Quorum No. 15 Leg.]

Abdnor	Gorton	Mathias
Andrews	Grassley	Mattingly
Armstrong	Hart	McClure
Baker	Hatch	Metzenbaum
Chiles	Hawkins	Murkowski
Cochran	Helms	Nickles
Cohen	Hollings	Proxmire
D'Amato	Humphrey	Specter
Danforth	Jepsen	Stafford
Domenici	Johnston	Symms
Exon	Kassebaum	Warner
Garn	Long	Weicker

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of the absent Senators.

The assistant legislative clerk resumed the call of the roll, and the following Senators entered the Chamber and answered to their names:

Baucus	Hatfield	Pressler
Bentsen	Hecht	Pryor
Biden	Heflin	Quayle
Bingaman	Heinz	Randolph
Boren	Huddleston	Riegle
Boschwitz	Inouye	Roth
Bradley	Jackson	Rudman
Bumpers	Kennedy	Sarbanes
Burdick	Lautenberg	Sasser
Byrd	Laxalt	Simpson
Chafee	Leahy	Stennis
Cranston	Levin	Stevens
DeConcini	Lugar	Thurmond
Denton	Matsunaga	Tower
Dixon	Melcher	Trible
Dodd	Mitchell	Tsongas
Dole	Moynihan	Wallop
Eagleton	Nunn	Wilson
East	Packwood	Zorinsky
Ford	Percy	

The PRESIDING OFFICE (Mr. D'AMATO). A quorum is present.

RADIO MARTI

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the motion to proceed to the consideration of S. 602, a bill to provide for the broadcasting of accurate information to the people of Cuba, and for other purposes, shall be brought to a close?

The yeas and nays are automatic under the rule. The clerk will call the roll.

The bill clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Wisconsin (Mr. KASTEN) are necessarily absent.

I further announce that, if present and voting, the Senator from Wisconsin (Mr. KASTEN) would vote "yea".

Mr. CRANSTON. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 62, nays 33, as follows:

[Rollcall Vote No. 242 Leg.]

YEAS—62

Abdnor	Hart	Nunn
Armstrong	Hatch	Packwood
Baker	Hawkins	Percy
Bentsen	Hecht	Pressler
Biden	Heflin	Quayle
Bingaman	Heinz	Randolph
Boschwitz	Helms	Roth
Bradley	Hollings	Rudman
Chafee	Huddleston	Sarbanes
Chiles	Humphrey	Sasser
Cohen	Inouye	Simpson
D'Amato	Jackson	Specter
Danforth	Kennedy	Stevens
DeConcini	Lautenberg	Symms
Denton	Laxalt	Thurmond
Dixon	Lugar	Tower
Dole	Matsunaga	Trible
Domenici	Mattingly	Wallop
East	McClure	Warner
Garn	Metzenbaum	Wilson
Gorton	Nickles	

NAYS—33

Andrews	Ford	Mitchell
Baucus	Grassley	Moynihan
Boren	Hatfield	Murkowski
Bumpers	Jepsen	Proxmire
Burdick	Johnston	Pryor
Byrd	Kassebaum	Riegle
Cochran	Leahy	Stafford
Cranston	Levin	Stennis
Dodd	Long	Tsongas
Eagleton	Mathias	Weicker
Exon	Melcher	Zorinsky

NOT VOTING—5

Durenberger	Goldwater	Pell
Glenn	Kasten	

The PRESIDING OFFICER. On this vote, three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

(Later the following occurred:)

Mr. BIDEN. Mr. President, I ask unanimous consent that my vote on the last vote on cloture be changed. It was my fault, not the clerk's. I voted "nay" when I meant to vote "yea" to cut off debate. I have checked this with both the majority leader and the minority leader. There is no objection, to the best of my knowledge.

I ask unanimous consent, assuming that unanimous consent is granted, that my request appear after the debate on this amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(The foregoing rollcall vote has been corrected to reflect the above order.)

Mr. BAKER. Mr. President, the cloture just invoked is against further debate on the motion to proceed, not on the bill itself. I fully expect we are going to have a fair amount of debate on the bill as and when we get to that bill.

DEPARTMENT OF TRANSPORTATION APPROPRIATIONS, 1984—CONFERENCE REPORT

Mr. BAKER. There is another matter that needs to be dealt with, and that is the DOT conference report which is available to us, and I would like to take that up. It is completed, and I do not think it will take very long to deal with.

I would inquire of the minority leader and all other Senators as to their feeling on proceeding to the consideration of that measure at this time notwithstanding the provisions of rule XXII.

Mr. BYRD. Mr. President, the question is addressed to me, and I have not had a chance to talk to my colleagues. Personally I have no objection. I do think we ought to try to establish some framework of time because conceivably—and I know this will not happen—otherwise conceivably it can be used to delay further action on Radio Marti.

Mr. BAKER. Mr. President, while we do that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, will the majority leader yield?

Mr. BAKER. Yes, I yield.

Mr. BYRD. I had forgotten there was a time agreement entered last night, so I withdraw my objection.

Mr. BAKER. Mr. President, in a moment I am going to ask unanimous consent that we go to the conference report under the terms of the time agreement previously entered into.

DESIGNATION OF MARTIN LUTHER KING, JR. BIRTHDAY AS HOLIDAY

Mr. BAKER. I believe, if I am not mistaken, while it is the practice of the messenger to only report the first document that there may be another document with that message. May I inquire is there a second message on the Martin Luther King birthday designation?

The PRESIDING OFFICER. H.R. 3706.

Mr. BAKER. Also.

The PRESIDING OFFICER. Yes.

Mr. BAKER. Mr. President, I have discussed this with the minority leader and a number of other Senators. I will not now do that, but I want to say it is my intention at some point to put that measure on the calendar by unanimous consent or to invoke the provisions of rule XXIV to do so.

As I say, I have discussed this extensively beforehand, and in a sense it may come as a surprise to some Senators, but I will not make either effort at this time. But I say this only to let them know it is my intention before this day is out to either ask unanimous consent to put that measure on the calendar or invoke the provisions of rule XIV which would culminate in the placing of that measure on the calendar in any event.

DEPARTMENT OF TRANSPORTATION APPROPRIATIONS, 1984—CONFERENCE REPORT

Mr. BAKER. Mr. President, I ask unanimous consent that it now be in order to proceed to the consideration of the DOT conference report as just received from the House under the time agreement previously entered into.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BAKER. I thank the Chair.

Mr. ANDREWS. Mr. President, I submit a report of the committee of conference on H.R. 3329 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3329) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1984, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective House this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of July 26, 1983.)

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. ANDREWS. Mr. President, I ask the Senate today to adopt the conference report on H.R. 3329, the fiscal year 1984 Transportation appropriations bill. The funding levels in the bill represent a balance among all transportation programs, while staying within the budget constraints with which the Congress and the Appropriations Committee are faced. The bill totals comport with the budget resolution allocation to the Transportation Subcommittee reported to the Senate last month. Furthermore, the conferees were able to reach accommodation on several legislative provisions, ranging from construction differential subsidies to national airport policy.

These compromises were the result of long and delicate negotiations with the House conferees and I feel sure that the Senate's position on all issues has been adequately protected.

We have every assurance from the executive branch that this bill will be signed by the President, making transportation the fourth appropriations measure enacted so far.

I want to thank the members of the conference committee and, in particular, the distinguished Senator from Florida (Mr. CHILES) whose help throughout the evolution of this bill has been invaluable.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. ANDREWS. I yield.

Mr. BYRD. I thank the distinguished chairman. Mr. CHILES was temporarily called off the floor to meet with a constituent. I wonder if we could put in just a brief quorum.

Mr. ANDREWS. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. On whose time?

Mr. BYRD. On Mr. CHILES' time.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ANDREWS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHILES. Mr. President, I rise to support the statement just made by Senator ANDREWS and to urge the members to support the conference agreement for the 1984 transportation bill.

Last February we began the hearings on the administration's budget requests for transportation. Over the last 6 months, Chairman ANDREWS has worked hard to accommodate matters brought to his attention. He has done this exceedingly well, and at the conference table he led us to a successful resolution on many difficult issues.

This conferences agreement accommodates the important transportation programs and projects that are of vital importance to the many States of our Nation. It does so, however, in a fiscally restrained manner.

Mr. President, the conference agreement is at the 302(b) allocation levels agreed to by the full appropriations committee and reported to the Senate on July 14, 1983. It also should be pointed out that the Transportation Subcommittee during the 302(b) allocation process within the Appropriations Committee recommended a $300 million reduction to the budget resolution funding assumptions for transportation. In other words, our conference total of $10.9 billion, while at the 302(b) allocation levels, is $300 million below the funding assumptions included in the budget resolution. The conference agreement is $873.6 million below last year's level, and it is $367.7 million below the level originally recommended by the House. The new budget authority recommended by the conference agreement is just $18.7 million more than the level requested by the administration. Based on the reductions we have made in the bill, we have received assurances that it will be signed into law.

Within the overall funding restraints, the conferees agreed to increased funding for a number of important programs. An $800 million level was agreed to for the grants-in-aid for airports program which is a full 100 million more than requested by the administration. The conferees also agreed to provide increases over the President's request for Urban Mass Transportation Administration section 9 formula grants and section 3 discretionary grants. These increases are $415 million and $125 million re-

spectively over the levels requested by the administration. The limitation on obligations for the Federal aid highway programs recommended by the conference is $12.520 billion. While this amount is less than the authorized level, it is 55 percent more than the $8.1 billion we started with last year.

Mr. President, one disappointment to me is the level of funding provided for the Coast Guard.

While the conference committee did agree to add $8 million over the Senate figure for Coast Guard operations, the overall funding level for the Coast Guard is actually $45.3 million below the level requested by the administration.

The amount agreed to for the Coast Guard is the lowest level possible to still permit the Coast Guard to continue its current level of operations. There is no room to respond to an unexpected situation such as the Mariel-Cuban boat lift or a sudden surge or increase in the flow of foreign drugs into the United States. Unfortunately, the Coast Guard, which is the fifth branch of the Armed Forces, has not been permitted to take part in the military buildup now underway for the other Armed Forces. I believe that we must reverse this situation in future appropriation bills.

Mr. President, there is one final matter I would like to comment on. This year the conference committee was chaired by Congressman BILL LEHMAN, chairman of the House Appropriations Subcommittee for Transportation and Related Agencies. Much of our success in conference as well as the amiable manner in which the conference was conducted was due to the leadership of Congressman LEHMAN. I know that I also speak for Chairman ANDREWS and other Members of the Senate who served in the conference committee in expressing our appreciation to Congressman LEHMAN for working toward a fair and well balanced compromise on each of the 70 items that the conference dealt with.

Mr. President, I will not take the time of the Members to detail the many other important items in the bill. I am prepared, however, along with Senator ANDREWS to attempt to answer any questions that the other Members might have.

Mr. LEVIN. Mr. President, the distinguished Senator from North Dakota will yield for a moment. Section 319 of the conference report states that "none of the funds in this or any other act shall be used by the Federal Aviation Administration for any facility closures or consolidations prior to December 1, 1983," and requires the FAA to submit a plan to the appropriate committees for future consolidations and closures.

This morning I received a call from Congressman WOLPE, who represents the Battle Creek area in Michigan, relative to information he received from the Department of Transportation that this language would preclude the FAA from making any announcement regarding the FAA's proposed consolidation of the Battle Creek and Minneapolis flight inspection field offices (FIFO's). I am told that the FAA had planned to make an announcement in the near future about which site—Battle Creek, Minneapolis, or a possible third site—had been selected for the consolidated office.

It is my understanding that the author of the amendment was concerned about the closing and consolidation of flight service stations and did not intend to prevent the closing or consolidation of flight inspection field offices. However, the language of section 319 is very broad and does not make any distinction between FIFO's and flight service stations. As a result, I wonder if the chairman of the subcommittee could respond to two specific questions I have regarding the consolidation of the Battle Creek and Minneapolis FIFO's.

First, can the Senator tell me whether the FAA will be able to go forward with an announcement about which site has been selected for the consolidated field office?

Second, under section 319, will the FAA be able to begin actual preparations for consolidation of the Battle Creek and Minneapolis FIFO's once an announcement has been made?

Mr. ANDREWS. I appreciate the concern of the Senator from Michigan. I have a similar situation in my own State of North Dakota and will be glad to clarify what we intended by the language he has referred to. It was the intent of the conferees that this language would in no way preclude the announcement of the intended consolidations presently under consideration by the FAA. It was also my understanding that the language was directed primarily at prohibiting the implementation of consolidation or closing of flight service stations. Therefore, nothing in this section of the bill would preclude the FAA from announcing and beginning to implement the consolidation of FIFO's.

● Mr. DOMENICI. I support the fiscal year 1984 Department of Transportation Appropriation Conference Report.

I would like to congratulate my distinguished colleagues, Senators ANDREWS and CHILES, and the members of the Senate Appropriations Committee for bringing back a conference report that is identical to the subcommittee's 302(b) crosswalk allocation. The conference report on H.R. 3329 provides $10.9 billion in budget authority and $9.7 billion in outlays for fiscal year 1984 for programs within the jurisdiction of the Department of Transportation, the Civil Aeronautics Board, the Interstate Commerce Commission and several other smaller transportation-related agencies.

I urge my colleagues to support the Transporation conference report. The conferees showed tremendous fiscal restraint in negotiating an agreement on H.R. 3329. The conference report is above the President's request by less than $50 million in budget authority and $0.4 billion in outlays.

With respect to the credit budget, the conference report provides $35 million in new direct loans obligations and $35 million in new primary loan guarantee commitments. The total for direct loan obligations is identical to the first budget resolution assumption for this bill. The total for primary loan guarantee commitments is $126 million less than that assumed in the first budget resolution.

Mr. President, I ask that two tables showing the relationship of the conference report to the congressional spending and credit budgets and the President's budget requests be printed in the RECORD at the conclusion of my remarks.

The tables follow:

TRANSPORTATION SUBCOMMITTEE SPENDING TOTALS—CONFERENCE AGREEMENT

[In billions of dollars]

	Fiscal year 1984	
	Budget authority	Outlay
Outlays from prior-year budget authority and other actions completed		15.7
H.R. 3329, conference agreement	10.9	9.7
Adjustment to conform mandatory programs to first budget resolution assumptions	−(1)	−(1)
Subcommittee total	10.9	25.4
Subcommittee 302(b) allocation	10.9	25.4
Senate-passed level	10.8	25.4
House-passsed level	11.3	25.6
President's request	10.9	25.0
Subcommittee total compared to:		
Subcommittee 302(b) allocation		
Senate-passed level	+.1	+(1)
House-passed level	−.4	−.2
President's request	+(1)	+.4

[1] Less than $50,000,000.

Note: Details may not add to totals due to rounding.

TRANSPORTATION SUBCOMMITTEE CREDIT TOTALS—CONFERENCE AGREEMENT

[In billions of dollars]

	Fiscal year 1984	
	New direct loan obligations	New loan guarantee commitments
H.R. 3329, conference agreement	(1)	(1)
Subcommittee total	(1)	(1)
Subcommittee 1st budget resolution assumption	(1)	0.2
Senate-passed level	(1)	(1)
House-passed level	(1)	(1)
President's request	(1)	(1)
Subcommittee total compared to:		
1st budget resolution assumption		−.1
Senate-passed level		
House-passed level		
President's request	+(1)	+(1)

[1] Less than $50,000,000.●

Mr. ANDREWS. Mr. President, I move that the Senate adopt the conference report.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. ANDREWS. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. CHILES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ANDREWS. Mr. President, I ask the Chair to lay before the Senate certain amendments which are in disagreement.

The PRESIDING OFFICER. The clerk will state the amendments in disagreement.

The assistant legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 1 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum inserted by said amendment, insert: *$36,500*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 23 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: *: Provided, That notwithstanding any other provision of law, the Secretary of Transportation may hereafter issue notes or other obligations to the Secretary of the Treasury, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury may prescribe. Such obligations may be issued to pay any necessary expenses required pursuant to the guarantee issued under the Act of September 7, 1957, Public Law 85-307, as amended (49 U.S.C. 1324 note). The amount of such obligations when combined with the aggregate of all such obligations made during fiscal year 1983 shall not exceed $175,000,000 by September 30, 1984. Such obligations shall be redeemed by the Secretary from appropriations authorized by this section. The Secretary of the Treasury shall purchase any such obligations, and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force. The purpose for which securities may be issued under such Act are extended to include any purchase of notes or other obligations issued under the subsection. The Secretary of the Treasury may sell any such obligations at such times and price and upon such terms and conditions as he shall determine in his discretion. All purchase, redemptions, and sales of such obligations by such Secretary shall be treated as public debt transactions of the United States.*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 28 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

EMERGENCY RELIEF

Notwithstanding sections 125, 129, and 301 of title 23, United States Code, an additional $20,000,000 shall be available from the Highway Trust Fund for the emergency fund authorized under section 125 of title 23, United States Code: Provided, That the Secretary shall give first priority to making funds available to repair or replace the Mianus Bridge on I-95 in Connecticut: Provided further, That the Federal funds provided herein shall not duplicate assistance provided by any other Federal emergency program, compensation received from Connecticut bridge insurance policies, or any other non-Federal source: Provided further, That regulations issued under section 125, title 23, United States Code, shall apply to the expenditure of such Federal funds: Provided further, That such funds shall not be available until the State of Connecticut enters into an agreement pursuant to section 105 of the Federal-Aid Highway Act of 1978 which covers the Mianus Bridge.

MIANUS BRIDGE EMERGENCY ASSISTANCE

For necessary expenses to help defray costs such as additional police and fire services and road repairs resulting from the Mianus Bridge collapse, $1,000,000: Provided, That such sum shall be equally divided between and allocated to the towns of Greenwich, Connecticut, and Port Chester, New York.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 39 to the aforesaid bill, and concur therein with an amendment as follows:

Restore the matter stricken by said amendment, strike out "fiscal year 1981", and insert: *fiscal year 1979*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 36 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: *: Provided, That the Secretary of Transportation is authorized to issue to the Secretary of the Treasury notes or other obligations pursuant to section 512 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210), as amended, in such amounts and at such times as may be necessary to pay any amounts required pursuant to the guarantee of the principal amount of obligations under sections 511 through 513 of such Act, such authority to exist as long as any such guaranteed obligation is outstanding: Provided further, That the amount of such notes or other obligations, when combined with the aggregate of all such note or obligations issued during fiscal year 1983, shall not exceed $150,000,000 by September 30, 1984.*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 41 to the aforesaid bill, and concur therein with an amendment as follows:

Strike out the matter stricken by said amendment, and insert:

ILLINOIS FEEDER LINE ASSISTANCE
(TRANSFER OF FUNDS)

For a grant related to the acquisition and rehabilitation of the railroad feeder line as authorized by section 511 of the Rail Safety and Service Improvement Act of 1982, $3,000,000, to be derived by transfer from the unobligated balances of "Redeemable preference shares": Provided, That such grant shall contain terms requiring (1) the repayment of the full amount of the grant to the United States in the event of the cessation of service on such line within five years after the first operation of such service after receipt of such grant, and (2) a liquidation priority for the United States in the event of bankruptcy within such five-year period.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 53 to the aforesaid bill, and concur therein with an amendment as follows:

Strike out the matter stricken by said amendment, and insert: *$18,400,000, for the period October 1, 1983 through August 1, 1984*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 60 to the aforesaid bill, and concur therein with an amendment as follows:

Strike out the matter stricken by said amendment, and insert:

Sec. 314. The Congress intends and directs that the proposed rulemaking to adjust the annual passenger ceiling at Washington National Airport be held in abeyance for at least 60 days from the date of enactment of this Act.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 61 to the aforesaid bill, and concur therein with an amendment as follows:

Strike out the matter stricken by said amendment, and insert:

Sec. 315. None of the funds provided in this Act for the Department of Transportation shall be used for the enforcement of any rule with respect to the repayment of construction differential subsidy for the permanent release of vessels from the restrictions in section 506 of the Merchant Marine Act, 1936, until 60 days following the promulgation of any such rule.

Notwithstanding any other provision of law, the enforcement of any rule regarding the repayment of construction differential subsidy for the permanent release of vessels from the restrictions in section 506 of the Merchant Marine Act, 1936, shall be held in abeyance for at least 60 days from the date of enactment of this Act.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 64 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the section number named in said amendment, insert: *317*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 65 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the section number "316" named in said amendment, insert: *318*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 66 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

Sec. 319. None of the funds in this or any other Act shall be used by the Federal Aviation Administration for any facility closures or consolidations prior to December 1, 1983: Provided, That the Federal Aviation Administration shall, no later than October 1, 1983, submit to the appropriate committees of the Congress a detailed, site-specific, and time-phased plan, including cost-effectiveness and other relevant data, for all facility closures or consolidations over the next three years: Provided further, That, in the instance of any proposed closure or consolidation questioned in writing by the House or Senate Committees on Appropriations or by any legislative committee of jurisdiction, no such proposed closure or consolidation shall be advanced prior to April 15, 1984, in order to allow for the timely conduct of any necessary congressional hearings.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 67 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the section number "318" named in said amendment, insert: *320*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 69 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the section number named in said amendment, insert: *321*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 70 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

Sec. 322. Notwithstanding any other provision of law, the limitation on total obligations for Federal-aid highways and highway safety construction programs for fiscal year 1984 contained in Title I of this Act shall be reduced by $80,000,000.

Resolved, That the House insist on its disagreement to the amendment of the Senate numbered 21 to the aforesaid bill.

Mr. ANDREWS. Mr. President, I move the Senate concur in the amendments of the House to the amendments of the Senate numbered 1, 23, 28, 36, 39, 41, 53, 60, 61, 64, 65, 66, 67, and 69.

The PRESIDING OFFICER. Without objection the motion is agreed to.

Mr. ANDREWS. Mr. President, I move that the Senate recede from its amendment No. 21.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2112

Mr. MATHIAS. Mr. President, I move that the Senate concur in the amendment of the House of Representatives to the amendment of the Senate numbered 70 to the bill H.R. 3329, with an amendment, which I now send to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS), for himself, Mr. DOMENICI, Mr. TRIBLE, Mr. WARNER, Mr. SARBANES, Mr. SASSER, Mr. BINGAMAN, Mr. EAGLETON, Mr. GLENN, Mr. BURDICK, and Mr. RANDOLPH, proposes an amendment numbered 2112.

Mr. MATHIAS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

Mr. SYMMS. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. I will not object, except I would like to reserve the right to make a point of order against the amendment, if I so choose.

The PRESIDING OFFICER. No rights are forfeited by having the amendment read. Does the Senator object to the reading of the amendment being called off?

Mr. SYMMS. I do not.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the matter proposed to be inserted by the amendment of the House of Representatives, add the following:

SEC. 323. None of the funds appropriated by this Act or any other Act may be obligated or expended before October 15, 1983—

(1) to adopt, to issue, or to carry out a final rule or regulation, a final revision, addition, or amendment to regulations, or a final statement of policy based on any proposed rule or regulation, any proposed revision, addition, or amendment to regulations, or any proposed statement of policy of which a notice was published in parts III-VI of the Federal Register on March 30, 1983 (48 F.R. 13, 342 to 13,381) or in parts III through VI of the Federal Register on July 14, 1983 (48 F.R. 32, 275 to 32,312); or

(2) to adopt, to issue, or to carry out any final rule or regulation, any final revision, addition, or amendment to a regulation, or any final statement of policy which effectuates the purposes of any proposed rule, regulation, revision, addition, amendment, or statement of policy referred to in clause (1).

Mr. MATHIAS. Mr. President, I offer this amendment today for myself and for Senators DOMENICI, TRIBLE, WARNER, SARBANES, SASSER, BINGAMAN, EAGLETON, GLENN, and BURDICK. Like the amendment I introduced last Friday, it is an extraordinary measure for an extraordinary situation. And, as I said last Friday, I take this unusual step because there is no alternative.

As my colleagues know, on March 30, the Office of Personnel Management issued regulations which propose dramatic changes in the rules governing the civil service. These changes include implementing a pay for performance plan throughout the Federal work force, diminishing the importance of seniority in a reduction in force, and providing guidelines for what is negotiable in a collective bargaining setting.

In the Civil Service Subcommittee of the Governmental Affairs Committee, which is chaired by the very able assistant majority leader, the Senator from Alaska (Mr. STEVENS), we have carefully reviewed the OPM proposals in not less than four separate hearings. We have identified a number of problems with the proposals, not the least of which is the fact that they constitute the most far-reaching changes to the civil service since the enactment of the Civil Service Reform Act of 1978. Yet, they are going to be made through administrative regulations, and not through the legislative process.

Mr. President, the action which we undertake today is necessitated by the fact that the Office of Personnel Management has scrapped its original March 30 regulations and issued a new set of proposals. The new proposed regulations, which will potentially be ready for implementation this month, while this Congress is in recess, remain fatally flawed for many of the same reasons that the earlier regulations were defective. There is a prohibition on the implementation of the March 30 regulations which was included in the fiscal year 1983 supplemental appropriations bill. But the prohibition speaks to the March regulations and not to the July regulations.

Mr. President, I would like to make clear to my colleagues that this amendment will not indefinitely block implementation of the OPM regulations. Instead, this amendment would delay implementation until October 15, 1983. In the meantime, the subcommittee will have a chance to work with the OPM on legislation it has drafted which takes a reasonable and rational approach to the problems OPM wants to address.

I have discussed this matter with the Director of Personnel, Dr. Devine, and I think he understands our position. The draft, which is the work of the chairman of the subcommittee, would authorize a portion of the regulations to be tested on 10 percent of the work force for 3½ years. It is a proposal that has the support of virtually all of the Federal employee groups and the General Accounting Office. So I hope that the Senate will adopt this amendment.

I yield to the Senator from Alaska for such time as he may require.

Mr. STEVENS. Mr. President, I strongly support the amendment offered by Senator MATHIAS to temporarily block the issuance of the Office of Personnel Management regulations until we have an opportunity to move legislation in these areas.

The Civil Service, Post Office, and General Services Subcommittee, which I chair, has held four hearings since April on the subject of the OPM regulations and related issues. I think most parties are in agreement that the current systems of performance appraisal, and pay for performance, and to a lesser extent reduction in force, do not work as intended. It is not easy to get agreement on what would im-

prove those systems. OPM's two sets of proposed regulations would make major changes Government-wide without first insuring they are workable.

I have prepared legislation that would establish a 3½ year experimental program which would create a series of demonstration projects on performance appraisal, pay for performance, and reductions in force. The experiments would cover a wide variety of agencies, grades, and locations. At last 150,000 employees would participate, 50 percent of which would be in units with an exclusive representative. Employees or their exclusive representatives would be given the opportunity to participate in the design of the experiment. This experimental period would be used to test a variety of approaches to see which ones could best be applied Government-wide.

The demonstration projects and evaluations of the results would allow all of us to benefit from experience without first putting one system in effect throughout the Government. For example, the merit pay system, enacted as part of the Civil Service Reform Act, was well-intentioned. We now have almost unanimous agreement that it has failed and are involved in legislative proposals that would make major changes to correct the deficiencies. Tests prior to its implementation could have cured the problems.

Since OPM has announced its intention to publish the regulations in final form during the recess, this amendment proposed by Senator MATHIAS is essential. I plan to hold a markup session on our legislation after the recess so the Senate should be able to consider the bill before the end of the fiscal year.

I frankly regret that this step is necessary. Throughout the past few months I have worked with employee and management groups and OPM to try to reach a consensus on an alternative to the OPM regulations. OPM's decision to move ahead without consensus is an unfortunate one. I still plan to try to reach an agreement with the administration on any proposal affecting these areas.

Mr. President, I wish to speak to the Senate now about the problem of procedures. I am sure that there will be some question of germaneness as far as this bill is concerned.

Last week, when we were handling the supplemental conference report, the distinguished Senator from Maryland had filed this amendment and came to me and asked me to handle it for him because of a personal problem that developed that he had to leave the Senate floor. I told him that I would raise the amendment for him. Of course, he knew that I supported the position that he stated on the floor that day.

I was in the position of being the manager of the bill, in the absence of the chairman of the Appropriations Committee, when that bill came before the Senate last week, the supplemental conference report. At the time, we were told that any amendment to that supplemental conference report would delay the passage of the bill and jeopardize the millions of people who depend upon food stamps.

I talked to the distinguished chairman of the committee, the Senator from Oregon, and explained the situation to him. We also communicated with people downtown who were vitally interested in the passage of the supplemental appropriations conference report. I did not raise the question of the Senator's amendment because of the assurance of all concerned that we would be able to raise the amendment of the Senator from Maryland on this conference report, even though we recognized that there could be a problem of germaneness.

I ask the Senate to in fairness understand that I would have been obligated personally to raise the amendment of the Senator from Maryland had I not had the assurance that all of those who were involved in the support of getting the supplemental appropriations conference report to the President and achieving its passage in time to prevent harm to the food stamp users convinced me that we would have their support here today. I urge them now to support us if there is an attempt to have this amendment declared nongermane. I think in all fairness we have to admit it is not germane to this bill. It would have been germane to the supplemental appropriations conference report because there was an amendment in that conference report which could have been amended by an amendment to the amendment in disagreement. It would have been germane to that conference report because the subject of the OPM regulations as covered in that supplemental bill.

It is a matter to me of the ability of the people who have to manage bills to be able to reach agreements that are in the best interest of the country as a whole to be able to carry out those agreements, to come here today to appeal to the Senate not to support any effort to declare this amendment nongermane. I was compelled, as I said, to not deliver on the commitment I had made to the Senator from Maryland to call up this amendment, notwithstanding the fact that I was the manager of that supplemental appropriations conference report.

I do believe that it is necessary to take the action, as I indicated in my previous statement, to delay the implementation of these regulations. The amendment in the supplemental was intended to delay the issuance of these regulations, but the Office of Personnel Management did not amend the original regulations. Instead, it issued a second set of regulations which do not accomplish the goals that we had discussed totally, and which leave us in the position where those new regulations, the second set of regulations, could actually become effective before the Congress resumes in September.

I believe our original intent to delay those regulations in order that the Congress might pursue the concept of some testing of the process of pay for performance and the system by which we appraise performance, before putting such system in place, is imperative. We must have a test of this new system.

I see my good friend from Oregon is here. I have just recited the conversation we had concerning the fact that if we delayed bringing up the amendment concerning the OPM on the supplemental appropriations conference report we would be in a position of offering it on a bill where it might be considered nongermane. The Senator from Oregon will recall the conversation where I told him I had assured the Senator from Maryland that in his absence I would raise the amendment, but I was not going to do it because of the request we had from all concerned to move the supplemental appropriations conference report, with the understanding that we would encourage the Senator from Maryland to raise this amendment to this conference report.

I discussed it also, I might add, with the Senator from North Dakota to alert him to that possibility. I would urge the Senator from Oregon to join me in resisting any attempt to have the Senate declare this amendment nongermane under these circumstances.

I yield to the Senator from Oregon.

Mr. HATFIELD. I would affirm the statements made by the Senator from Alaska. He has stated the case correctly. On behalf of the committee, I would urge the amendment, as he has indicated.

Mr. STEVENS. I thank the Senator.

Mr. ABDNOR. Will the Senator yield?

Mr. MATHIAS. I yield.

Mr. ABDNOR. I have been wanting to have the opportunity to present a few remarks concerning this amendment.

First, let me say that I am quite well versed on this subject inasmuch as the appropriations for the Office of Personnel Management comes under the subcommittee which I chair, and I deal frequently with Dr. Devine. As a matter of fact, just a few moments ago, Dr. Devine stated he did not endorse this amendment, and he wanted his original regulations to go through as planned. To my knowledge, no one

in the administration has told me they were against what Dr. Devine was trying to do.

Mr. President, I oppose the amendment. The amendment will prohibit implementation of new regulations OPM has designed to enhance the role of performance and increase efficiency and effectiveness in our personnel management system. On March 30, 1983, OPM published in the Federal Register a related series of regulatory initiatives. The other body passed an amendment to this bill freezing implementation of those rules. The Senate subsequently receded.

Opposition arose to these proposed regulations. As a result, OPM met with the prime opponents, reviewed public comment, and has reissued new proposed regulations which I believe respond to the original objections. This amendment will place a freeze on implementation of these regulations. These changes will improve efficiency and effectiveness in the Federal Government. I think they are good and should be implemented. I would like to outline them for you. The major proposals governing reduction in force are:

First. The use of the longer performance appraisal for purposes of RIF. The original OPM proposal provided for use of an employee's latest single performance appraisal in a RIF situation. OPM has now extended the appraisal period to 3 years for RIF purposes. OMP will also now require direct consultation between supervisors and employees in the establishment of elements in their performance appraisals to minimize subjectivity or arbitrary ratings.

Second. Veterans rights. Strong provisions for hiring and retaining veterans are firmly set in law and OPM has not suggested any changes that would limit veterans' preference. Veterans will continue to enjoy the strong protections they have always enjoyed. Two regulatory changes will enhance that protection. First, OPM will insure that agencies' competitive areas and levels are sufficiently broad to protect veteran employees from arbitrary targeting in RIF situations and will serve to protect veterans better in the first round in any future reduction in force. Second, while all Federal employees will be limited in retreat to one grade, 30 percent or more disabled veterans will be given rights to retreat down to five grade levels.

Third. Bump rights. Under the original proposal, OPM limited bump assignment rights to one grade down in a RIF situation. As a result of extensive comment, OPM has agreed to broaden bump rights for employees affected by a RIF from one to two grades. This will give extra protection to employees displaced by a RIF, but will also minimize disruption to the government which now results from the situation where GS-15 managers are bumped to GS-1 clerks.

Fourth. Enhancing performance and protecting seniority. OPM is also soliciting comments on a new alternative proposal that would give greater weight to performance than at present while protecting seniority more than in its other proposal.

Pay for performance rules include:

First. Higher level review. Under OPM's new regulation, an employee will have the right to higher level reconsideration of his or her individual performance rating, if that employee feels that such a reconsideration is warranted.

Second. Forced distribution of ratings. OPM's new proposal would forbid prior forced distributions (bell curves) for performance ratings.

Third. Career ladder promotions. OPM's original proposals specified minimum time in service for promotion through career ladder. The time limitations have been deleted in the new regulations.

Fourth. Implementation period. Agencies are given up to 1 year to make actual payments to employees under the new system, rather than the 6 months of the original proposal.

Mr. President, I, therefore, reiterate my opposition to this amendment.

Mr. MATHIAS. Will the Senator yield for a moment to let me inquire as to how much time we have on the affirmative side?

The PRESIDING OFFICER. The time has expired.

Mr. MATHIAS. Let me ask the minority side, since we have yielded to Senator ABDNOR, if they can yield time to Senator WARNER and Senator TRIBLE.

Mr. MELCHER. I think we will have adequate time, Mr. President, to yield additional time to Senator WARNER, Senator TRIBLE, and Senator SYMMS.

I yield 3 minutes to the Senator from Virginia.

Mr. WARNER. Mr. President, I rise to congratulate the distinguished Senator from Maryland, Senator MATHIAS, for introducing this amendment, which I have cosponsored. The Office of Personnel Management has proposed to put into effect new regulations covering performance rules on within-grade pay raises and reductions-in-force effective August 15.

Our amendment will delay the implementation of these new regulations until October 15, giving the Congress time to study the OPM proposals and establish other rules, if it is deemed necessary.

Presently, the Senate Subcommittee on Civil Service, Post Office, and General Services is considering various proposals, including changes in the merit pay program, S. 958, sponsored by my colleague from Virginia, Senator TRIBLE, and myself.

Due to the August recess, it is impossible for the subcommittee to complete its deliberations and the Governmental Affairs Committee to report legislation to the full Senate for action prior to August 15.

I urge my colleagues to support this amendment because the actions taken with regard to the changes proposed will affect the character of the civil service for years to come.

The Congress needs this additional time to make responsible choices.

The Senator from Maryland properly recognizes the need for time to study the OPM proposals and establish other rules if they are deemed necessary. It is for that reason that I join him.

I thank my colleague for yielding.

Mr. MELCHER. I yield 3 minutes to the junior Senator from Virginia.

Mr. TRIBLE. Mr. President, I thank my colleague for yielding. I rise in support of the amendment and I applaud the efforts of my colleague (Mr. MATHIAS) to prevent the implementation of sweeping changes in personnel regulations now proposed by the Office of Personnel Management.

The Office of Personnel Management intends to undertake major changes in Federal personnel policies without the first shred of evidence about the impact of these changes on the Federal work force.

OPM assures us that the regulations will "encourage all Federal employees to tackle their work effectively, enthusiastically, and to the best of their ability." This is a description of a "best case scenario." We have no reason to assume that this untried system will result in a more effective and efficient work force. The single instance of a pay-for-performance system in the Federal Government, the merit pay system, is poorly designed and a source of dissatisfaction for the employees subject to it.

That is why I have introduced legislation to restructure the current merit pay system. Until we have some experience, we should not attempt total restructuring of the current system. The fact is, there is no way to gage the effect governmentwide implementation of these regulations will have without experimentation.

The intent of these regulations is to reward the Federal Government's best workers and to provide incentives to encourage good performance by all civil servants. The pay and retention of general schedule employees would be based on job performance, with this system being implemented governmentwide as soon as possible.

Theoretically, the concept of OPM's regulatory proposal is sound. No one can take issue with a system that awards good performance, and provides the incentives that foster a quality work force. But we must be certain

that any such system is governed by sound management policies and performance practices.

Many of the changes OPM would effect through the regulations are sensible. The regulations published for comment in the July 14, 1983, Federal Register meet many of the specific objections raised in comments OPM received on the proposed regulations published March 30, 1983.

However, I do not believe that implementing this system throughout the general schedule is in the best interest of the Federal work force, or for those who depend on their services.

Congress is now considering new pay and reduction-in-force systems which embody the concept put forth by OPM. Changes in personnel regulations of the magnitude proposed by OMP should be given careful and in-depth consideration.

Accordingly, I urge my colleagues to support the amendment of the Senator from Maryland.

Mr. MELCHER. Mr. President, how much time remains?

The PRESIDING OFFICER. Eleven minutes.

Mr. MELCHER. Mr. President, I yield 5 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. I thank my distinguished colleague for yielding.

At the outset, Mr. President, I compliment my colleagues from Maryland and Virginia and the distinguished Senator from Maryland who offered the amendment. Let me state also at the outset that I oppose the amendment.

May I ask the Chair: Have the yeas and nays on the amendment been ordered?

The PRESIDING OFFICER. They have not.

Mr. SYMMS. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SYMMS. I might say, Mr. President, that I have done that because of the debate that has taken place thus far. It is very obvious that this amendment is not germane and is out of order. If we were in the other body, it would be a simple matter for a Member to make a point of order and knock it out of the bill. But in this body, we are going to vote on it one way or the other. I would prefer to vote on the amendment on its merits rather than have the confusing situation of voting on the ruling of the Chair.

It is my understanding this is the proper parliamentary procedure. Would the distinguished Senator from Maryland verify that for me?

Mr. MATHIAS. That is correct, Mr. President.

Mr. SYMMS. Mr. President, the reason I rise in opposition to this amendment is I simply do not see any merit in having OPM delay the implementation of its regulations, which are in keeping with the Administrative Procedures Act and the Civil Service Reform Act (CSRA) of 1978.

Quite frankly, these regulations are required by law. The Civil Service Reform Act of 1978 requires that civil servants be guaranteed pay increases and promoted on the basis of merit. These regulations underscore the importance of giving within-grade pay increases, and of reducing employee numbers during a reduction in force (RIF). The intent of Congress and the requirements of the American taxpayer are fulfilled by these new regulations.

I would like to take a minute to describe what these OPM regulations actually do:

OPM first published these pay for performance regulations in the Federal Register on March 30, 1983. They were criticized as controversial by some groups who have a vested interest in maintaining status quo, whether or not it is in the best interest of the Federal employees. Others applauded the efforts of OPM. OPM attempted to provide a system whereby the best performers could be rewarded for their work. But also, where reduction in force occurs, those excellent workers could be retained on the basis of their performance, and not simply on the basis of longevity.

These published regulations would establish a performance based incentive system for Federal general schedule employees. The regulations were designed to pay employees based on their performance on the job, and to give greater weight to performance in retaining workers if reduction in force should become necessary.

OPM, in its efforts to be responsive to the concerns and comments made by Members of Congress, Federal employee groups, veterans organizations, and other interested parties during the 60-day comment period, published a revised set of regulations on July 14, 1983. These revised regulations more than reflect the desire of OPM to clean up those areas that are confusing.

For example, the revised regulations extend the appraisal period to 3 years for RIF purposes rather than 1 year, require the consultation between supervisors and employers in the establishment of performance elements, tighten the definition for competitive areas and levels in a RIF to protect veterans and other employees from arbitrary assignment, forbid forced distribution of ratings, require an internal reconsideration process for employee performance ratings, tighten the definition of ratings levels to remove ambiguity, and allow more time for agencies to implement the new performance based incentive system.

In other words, I believe, OPM has answered all the relevant objections made and most of these revisions were agreed to in meetings with the staffs of various committees. I have included with my statement a side-by-side comparison of the March 30 and July 14, 1983, regulations which will document my point. I ask unanimous consent that this be printed with my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OPM REGULATORY PROPOSALS

On March 30, 1983, the Office of Personnel Management published proposed regulations that would put into place a Performance Based Incentive System for Federal General Schedule employees. The regulations were designed to pay employees based on their performance on the job, and to give greater weight to performance in retaining workers if Reductions in Force should become necessary.

After reviewing and analyzing a wide range of comments from agencies, unions and Federal employees and after discussion with members of Congress, several important changes to the proposed regulations have been made.

Original proposed regulations	Revised proposed regulations
CAREER LADDER PROMOTIONS	
The following performance summary ratings were required for career ladder promotions at GS–9 and above within periods of time specified: Outstanding for promotion after one year in grade; Exceeds Fully Successful after three years.	Minimum times specified have been deleted. All employees must have a summary rating of Fully Successful or above to be eligible for career ladder promotions, however, employees with the highest summary ratings must be given first consideration.
PERFORMANCE APPRAISAL	
Critical elements were to be the only elements. Non-critical elements were allowed.	Non-critical elements to be permitted but may not be used to derive summary ratings.
Job expectations and requirements must be described at the Fully Successful level for critical elements.	Standards for Fully Successful must be described for all performance elements. A rating can not be given more than one level above or below a described level of performance, performance standards must be described at multiple rating levels.
FORCED DISTRIBUTION OF PERFORMANCE RATINGS	
The regulatory prohibition against forced distribution of ratings was deleted.	New language: "An appraisal system shall not permit any preestablished distributions of expected levels of performance (such as the requirement to rate on a bell curve) that interfere with appraisal of actual performance against standards. However, agencies must provide for higher level management of the performance appraisal process in the interest of employee equity and in order to reflect organizational performance."
Language in rating level definitions included terminology such as "the majority of employees should fall within the Fully Successful level.".	New rating level definitions delete language which was misinterpreted as permitting forced distribution.
GRIEVANCE OF PERFORMANCE RATING	
"An employee may not grieve or appeal a performance rating. The assignment of performance ratings is a management right under 5 U.S.C. 7106(a) which reserves to management the right to direct employees and to assign work.".	Adds: Within the context of management rights, an employee is given the right to ask for reconsideration of a performance rating decision in the interest of ensuring fairness of the individual's rating.

Original proposed regulations	Revised proposed regulations
TIMING OF QUALITY STEP INCREASES AND PERFORMANCE AWARDS	
Optional QSIs and performance awards were delayed until the end of the fiscal year.	QSIs and performance awards will be effective as soon as possible after performance appraisals are completed.
STANDARDIZED REGULATORY FEATURES	
Required five rating levels for each critical element and five summary rating levels.	
Required completion of performance ratings within 60 days prior to the end of a non-merit pay employees' waiting period for a within-grade or step increase.	
Permits agencies to give annual appraisals at any time of the year and in conjunction with management planning cycles.	
Performance elements, standards and ratings, and performance based personnel actions must be reviewed and approved by a supervisor or manager at a higher level than the appraising official.	
Agencies must award a quality step increase to an Outstanding employee in steps 1 through 3 of each General Schedule grade: (to ensure rapid advancement of top performers).	

MAJOR CHANGES IN THE NEW PROPOSED RIF REGULATIONS

Mar. 30, 1983, proposal	New proposal
CREDITING PERFORMANCE	
Crediting only the employee's current performance rating would be used to determine the employee's performance category for retention.	An employee's performance category would be determined by a composite rating based on the median of the employee's last three annual performance ratings, except for employees currently rated unsuccessful under Part 430.
ASSIGNMENT RIGHTS (BUMP & RETREAT)	
We originally proposed that bumping rights during a reduction in force be limited to the next lower grade and that retreat rights be limited to positions held within the last 5 years.	The one-grade interval limit on bump would be extended to two grade intervals and the five year limit on retreat would be eliminated. The one-grade interval restriction on retreat would be extended to five grade intervals for 30 percent disabled veterans.
NOTICE PERIOD	
A RIF notice period of 30 days was proposed.	The proposed changes would set the minimum notice period at 30 days and the maximum at 90 days.
COMPETITIVE AREA	
A competitive area was permitted for any organization distinguished by its staff and work function.	The competitive area will be no smaller than a bureau or division.
COMPETITIVE LEVEL	
Considerable discretion was allowed in setting competitive levels for a RIF.	We are including more specific job-related criteria for use in setting competitive levels.
DISCRETIONARY PROVISIONS	
	In a new proposal we are removing agency discretion to combine competitive areas and allow displacements across competitive areas. This is intended to insure the integrity of the competitive area requirements and limit unnecessary disruption.

Mr. SYMMS. Mr. President, I appreciate the attention of my colleagues to this important matter. This is simply a problem, as we are sitting here, that is inherent in what happens in the Federal Government. We have four very able Senators here today who are, as they should be, responding to requests with their perception of what their constituents' interests may be. We have had an effort made here to try to reward merit performance by OPM. Now, when we are put to the test to let some things go into effect that might produce some efficiencies and some savings in the operation of the Federal Government, which is so far in debt and is going further in debt by the minute as we stand here and talk, we are standing here and preparing to accept an amendment to block those efforts that are being made, as small as they are. I might say, as modest changes as they are, they do head us in the right direction.

I also say that the legislation that provided for this was actually done under the previous administration, under the guidance of President Carter, the farmer from Georgia who wanted to come to Washington and try to do some things to be able to reward people for performance. It was passed, properly, I think, by the Congress in 1978.

Now, the first time they try to do something about it, we in Congress fail to let the administration carry out what the intent of Congress was in 1978, what the intent of President Carter was, and I think the intent that President Reagan would like to carry forward. I urge my colleagues to vote down this amendment.

I thank my colleague from Montana for yielding me some of the minority's time.

Mr. MELCHER. Mr. President, I yield the remainder of the time allotted to the Senator from Maryland (Mr. SARBANES).

Mr. SARBANES. I thank the Senator.

Mr. President, I wish to express my strong support for the amendment offered by my distinguished colleague from Maryland. This amendment would block the Office of Personnel Management from implementing a set of regulations promulgated on July 14 making sweeping changes in pay, promotion, and firing procedures in the civil service until October 15, 1983.

It is important to understand the sequence of events that led to this amendment being offered today. OPM originally promulgated regulations dealing with the civil service on March 30 of this year. The regulations proposed such sweeping changes that there were efforts in both the House and Senate to prohibit implementation. Language prohibiting the implementation of the new rules was passed by the House and was incorporated in the conference report on the supplemental appropriations bill. We approved the conference report including the prohibition just last week.

Unfortunately, the prohibition we approved was rendered moot by OPM. The problem is that the conference report mentioned by date the regulations published on March 30. On July 14, OPM published a new set of regulations covering the same issues as the March 30 package. But because the prohibition refers specifically to rules published on March 30 it will not affect the implementation of the new set of rules.

In my view, OPM is acting in a high-handed manner to circumvent the clear intent of the Congress. The House and Senate conferees on the supplemental appropriations measure recognized that the original regulations were far too broad to be implemented administratively.

While there were some changes incorporated in the latest set of regulations, the new set proceeds from the same premise as the previous package and are as far reaching in their effect. The issue posed here is fundamental and goes beyond the specific provisions of the regulations. Changes in the Civil Service as broad as those proposed by OPM should be accomplished by legislation not by regulation. The Government Affairs Committee has held four hearings on the proposals and is developing legislation that will be available for the Congress in the fall. We must not let OPM undercut congressional action on an issue of this magnitude.

The chairman of the Civil Service Subcommittee of the Governmental Affairs Committee and assistant majority leader of the Senate, Senator STEVENS, has asked OPM to delay implemention of the regulations pending legislative action. His appeal has been ignored. The sponsor of this amendment has indicated that the administration could resolve this matter by voluntarily delaying implementation. This proposal has been refused. We are faced with a direct challenge and we ought therefore to make it clear that OPM cannot use the tactic of putting forth new regulations to circumvent congressional action.

I very much hope the amendment will be adopted.

I yield back the remainder of my time to the Senator from Montana.

Mr. DECONCINI. Mr. President, I cast my vote in favor of Senator MATHIAS' amendment to delay implementation of OPM's regulations on pay for performance. I do support a move to pay for performance regulations. However, I believe that Director Devine has moved too fast on these regulations and that a simple delay until October 1, 1983, will do nothing to harm the process and can only bring about a better and more constructive dialog on this issue.

Senators HATFIELD, STENNIS, ABDNOR, and I sent a letter to the White House asking for this delay in order to avoid a fight on the floor. Our request was turned down. Therefore, Senator MATHIAS felt he had no choice but to offer his amendment.

Let me make this clear. A vote for the Mathias amendment should not be construed as a vote against the pay for performance standard. Rather, it should be seen as a call for careful consideration and consultation with the Congress. I hope that this 2

month delay will give OPM a chance to work with the House and Senate committee which are discussing this matter and that a suitable pay for performance standard can be reached.

Mr. MELCHER. Mr. President, we have no further requests for time, and I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. TRIBLE). The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Arizona (Mr. GOLDWATER) and the Senator from Wisconsin (Mr. KASTEN) are necessarily absent.

Mr. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from California (Mr. CRANSTON) and the Senator from Ohio (Mr. GLENN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 75, nays 18, as follows:

[Rollcall Vote No. 243 Leg.]

YEAS—75

Andrews	Grassley	Nickles
Baker	Hart	Nunn
Baucus	Hatch	Packwood
Biden	Hatfield	Pell
Bingaman	Hawkins	Percy
Boren	Heflin	Pressler
Boschwitz	Heinz	Proxmire
Bradley	Hollings	Pryor
Bumpers	Huddleston	Quayle
Burdick	Inouye	Randolph
Byrd	Jackson	Riegle
Chafee	Johnston	Roth
Chiles	Kassebaum	Sarbanes
Cochran	Kennedy	Sasser
Cohen	Lautenberg	Simpson
D'Amato	Leahy	Specter
Danforth	Levin	Stafford
DeConcini	Long	Stennis
Dixon	Mathias	Stevens
Dodd	Matsunaga	Thurmond
Eagleton	Melcher	Tower
Exon	Metzenbaum	Trible
Ford	Mitchell	Tsongas
Garn	Moynihan	Warner
Gorton	Murkowski	Weicker

NAYS—18

Abdnor	Helms	McClure
Armstrong	Humphrey	Rudman
Denton	Jepsen	Symms
Dole	Laxalt	Wallop
East	Lugar	Wilson
Hecht	Mattingly	Zorinsky

NOT VOTING—7

Bentsen	Durenberger	Kasten
Cranston	Glenn	
Domenici	Goldwater	

So the motion to concur in the amendment of the House of Representatives to the amendment of the Senate No. 7. with Mr. MATHIAS' amendment numbered 2112 was agreed to.

Mr. MATHIAS. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. WARNER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RANDOLPH. Mr. President, as in morning business, I ask unanimous consent to speak briefly.

The PRESIDING OFFICER. Without objection, it is so ordered.

A TRIBUTE TO FEDERAL GOVERNMENT WORKERS

Mr. RANDOLPH. Mr. President, the action just taken in the overwhelming approval of the amendment offered by the able Senator from Maryland (Mr. MATHIAS), joined by other cosponsors including myself, recalls to my mind the statement by Winston Churchill when he was Prime Minister of Great Britain. He said:

I am profoundly weary at the constant attack on the civil servants of our government.

Mr. President, during the 79th Congress I chaired the Civil Service Committee of the House of Representatives in the years of 1945 and 1946.

Then, as now, I believe that effective workers, regardless of the changes in administrations, are a credit to representative government.

I think we need from time to time to express our respect for those who work in the departments of our Government at the Federal level, believing them to be not partisan in nature but strictly those who serve not only Congress or the White House but serve very, very well the people of this Republic.

Mr. ANDREWS. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ANDREWS). Without objection, it is so ordered.

DESIGNATION OF MARTIN LUTHER KING, JR., BIRTHDAY AS HOLIDAY

Mr. BAKER. Mr. President, I indicated earlier today when the messenger arrived from the House of Representatives on the Martin Luther King, Jr., bill it would be my intention later in the day to either ask unanimous consent to place that matter on the calendar or to proceed under the provisions of rule XIV to attempt to do so.

Mr. President, H.R. 3706 is at the desk, is it not?

The PRESIDING OFFICER. It is.

Mr. BAKER. Under the provisions of rule XIV, Mr. President, I ask for first reading.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3706) to amend title 5, United States Code, to make the birthday of Martin Luther King, Jr., a legal public holiday.

Mr. BAKER. Mr. President, may I inquire of the minority leader how he would feel now, after first reading, if I asked unanimous consent to place this on the calendar? Let me say why, for a minute, for all of my colleagues. As the minority leader well knows, and I am sure other Senators know as well, under the provisions of rule XIV I can now call for second reading, and if there is an objection—and surely there will have to be an objection to further proceeding to that measure—it would go over until the next legislative day, and ultimately it would go on the calendar.

So what we are doing is prolonging the process that way. Rather than do that, which I am prepared to do, rather than to go the full route, I wonder if the minority leader is prepared for me to put a unimous-consent request at this time that the matter be placed directly on the calendar?

Mr. BYRD. Mr. President, I have no objection to placing this matter on the calendar. As I indicated to the majority leader, I tried to work out a trade whereby one of the two measures I have initiated rule XIV on would also go on the calendar. But the majority leader says he would have to go through his whole clearance process, which I have to go through from time to time, and I do not want to put him through that because he is going to put it on the calendar on the next legislative day when we return.

Mr. BAKER. I understand. I make that request.

The PRESIDING OFFICER. Without objection, the request is granted.

SENATE SCHEDULE FOR THE REMAINDER OF THE DAY OR TOMORROW

Mr. BAKER. Mr. President, there are negotiations underway to try to arrange the schedule for the remainder of this day or tomorrow. I understand Senators know very well we have about three balls in the air at the same time and much controversy surrounding all of them. So while we try to arrange these matter it may be that other Members have matters they wish to speak to.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business to go until 4:30 p.m. in which Senators may speak for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. I thank the Chair.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

(Mr. SPECTER assumed the chair.)

Mr. COCHRAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COURT SPEEDS APPEALS PROCESS

Mr. COCHRAN. Mr. President, those of use who have been discouraged with the slow process of justice in some of the U.S. courts can take some satisfaction in a recent decision of the U.S. Supreme Court. This is a case that came up from the Fifth Circuit Court of Appeals under the style Barefoot against Estelle, director, Texas Department of Corrections, which was decided on July 6, 1983. The Court's ruling in this Texas case involved a conviction and sentence with capital punishment. It indicates that a majority of the Justices supported expedited procedures by appeals courts in considering constitutional challenges to murder convictions and requests for stays of execution. Justice Byron White, in the majority opinion, upheld legal shortcuts that could speed up the handling of appeals from the 1,202 inmates on death row in 37 States.

He said that courts may adopt expedited procedures as long as a prisoner "has adequate opportunity to address the merits (of his case) and knows that he is expected to do so."

The U.S. Constitution guarantees fair and speedy trials and Congress has taken action to give criminal cases priority in the Federal trial courts. Most criminal cases fall under State jurisdiction and are tried initially in State courts. Unless these cases are appealed to the Federal courts, trial, conviction, and sentencing are carried out in a reasonable period of time in most cases. In recent years, undue snarls have developed in our criminal justice system as defendants who are represented by clever lawyers have exploited the appeals process to its fullest and crowded the Federal court dockets, frustrating the process of our criminal justice system.

Mr. President, I think most reasonable citizens want each accused person to be protected by inviolate constitutional rights. History is replete with grim reminders of alternative systems—the inquisitions and judicial tyranny and terror imposed in such regimes as Nazi Germany, Soviet Russia, and lately in Iran. But the trend has been for multiple appeals to be taken, submitted selectively, one at a time in many cases, resulting in the prevention of the imposition of punishment ordered in criminal cases.

In our State, there have been two recent examples of State court convictions and sentences that have been stayed with appeals into the Federal court system. We are informed by court experts that an average of nearly 3 years is consumed by criminal defendants appealing their convictions and sentences while on death row in capital cases. I do not think this is speedy justice. I am certain that a vast majority of citizens are concerned about their own safety in their homes and neighborhoods and that they do not think this is speedy justice either.

It is extremely frustrating, too, for law enforcement officials to work diligently to bring criminals to justice, secure indictments, convictions, and appropriate sentences, then watch helplessly as the guilty evade final justice through crafty exploitation of the appeals process.

The Supreme Court now apparently has become sensitive to this situation and is pointing the way for swifter administration of justice in criminal cases. It is incumbent upon us in Congress to implement any legislative changes that may be needed to help expedite the appeals process in the Federal courts.

As one Member of this body, Mr. President, I have been working actively in support of legislation to toughen up the criminal justice system. I think, in view of the Supreme Court's decision, there should be a renewed effort in the Senate to help promote the orderly administration of justice.

TELEPHONE EQUIPMENT FOR THE DISABLED

Mr. MATHIAS. Mr. President, last year the Senate unaimously passed S. 2355, the Telecommunications for the Disabled Act. This statute, Public Law 97-410, overruled a part of the Federal Communications Commission's Computer II decision. Under the act, State regulatory commissions may continue their practice of allowing telephone companies to recover in their tariffs the reasonable costs of providing specialized equipment for the disabled.

The tariffs typically allow telephone companies to spread among all ratepayers the extraorinary costs of developing and installing for people with impaired hearing, speech, vision, or mobility such specialized equipment as large button phones and teletypewriters. By enacting this legislation, Congress affirmed its commitment to insure that the benefits of new technologies in telecommunictions are enjoyed by all Americans, including the disabled and the elderly.

In comments in advance of the FCC rulemaking required by the statute, American Telephone & Telegraph has suggested that the equipment should be detariffed because the plan of reorganization before Judge Greene transfers the installed equipment to American Bell, a part of AT&T. It would be awkward, AT&T argues, to provide this equipment on a subsidized basis when American Bell is a competitive, profitmaking enterprise.

Organizations representing the disabled have suggested that AT&T should either agree to continue to subsidize this equipment or to leave the operations that serve the disabled with the local operating companies. Although the issue is before Judge Greene and the FCC, AT&T has agreed to meet with these groups in order to clarify how the special needs of the disabled will be addressed after divestiture.

The local Bell companies have a generally commendable record of serving the disabled in the past. New developments promise even more opportunities to use telecommunications to increase the security of older or handicapped Americans and to deinstitutionalize many disabled citizens. The divestiture process must not be allowed to neglect the needs of the disabled nor the benefits that follow access to telecommunications at affordable rates.

CONGRESSIONAL APPROVAL FOR TROOPS IN CENTRAL AMERICA

Mr. KENNEDY. Mr. President, the legislation we are introducing today comes out of a deep and growing concern that the Reagan administration, in the absence of any reasonable consultation with Congress, has put our country on a track toward war in Central America.

This legislation will stop this slide toward war, until Congress has had the opportunity to examine the issue and to exercise our constitutional responsibility.

Specifically, our bill will prohibit the Reagan administration from sending any American combat forces into Central America without the approval of Congress. That prohibition applies to actual combat, which all of us hope will never occur, and it also applies to Big Pine 2, the ominous, massive, so-called training exercises which the administration is now frantically planning for later in the year and which will apparently involve thousands of American combat troops.

All of us agree that appropriate steps are needed to shut off the flow of weapons from Nicaragua, Cuba, and other sources to the guerrillas in El Salvador. But the administration's methods are highly inappropriate. There is little doubt that the President's secret war against Nicaragua, masterminded by the CIA from sanctuaries across the border in Honduras, has now put Honduras at potential military risk. But the proper solution is a negotiated settlement, not the militarization of Honduras and the escalation of the arms race in this hemisphere. Instead of a reckless show of force, it is time for a sensible show of peace.

The President is playing with matches in Central America, and Congress must not permit him to light the spark that provokes the incident that starts the war. Our message to the administration is clear. Stop your military escalation; stop your gunboat diplomacy; start paying more than lip service to negotiations; start giving peace a real chance in Central America.

QUORUM CALL

Mr. MATHIAS. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CRITICAL AGRICULTURAL MATERIALS ACT

Mr. DOLE. Mr. President, for the last 2 weeks the Senate has been trying to find a way to pass a farm bill including some changes in the target prices for grain and cotton, the dairy compromise and various tobacco amendments. The effort has not been easy. Some Senators do not want us to have an up or down vote on the target price freeze proposed by the administration. Others want to offer amendments to the dairy plan or on loan rates or sugar. Still others may not want a farm bill at all, and they may get their wish. Both the House and Senate are set to go home tomorrow. If we do not pass the bill today, go to conference late today or tomorrow morning in time for final passage, it will preserve the unbroken record of the 98th Congress, to have failed to pass one major piece of agricultural legislation.

But before we achieve that dubious distinction, Mr. President, I thought those of us who do care about passing responsible farm bills should take one more crack at it. Accordingly, I am having prepared a collection of the constructive and noncontroversial measures which various Senators have suggested. I am certain the selection is incomplete; that other worthwhile proposals have not come to my attention, and I would be pleased to consider including them in the bill we are preparing. But at present I would indicate the various titles of the bill as it stands and we can go from there: The dairy compromise as passed by both the Senate and House Agriculture Committees. It also includes a Pressler amendment requiring a study of whether a payment limitation should be applied to the paid diversion program; various tobacco provisions approved by the Senate Agriculture Committee, various amendments proposed by the distinguished Senator from Nebraska (Mr. ZORINSKY) and the distinguished Senator from Illinois (Mr. DIXON) to incorporate parts of S. 822, the Agricultural Export Equity and Market Expansion Act of 1983. These provisions deal with barter of farm commodities; the proposal by the distinguished Senator from Nebraska (Mr. ZORINSKY) and the Senator from North Dakota (Mr. ANDREWS) to use CCC-owned grains for conversion to alcohol fuel and to guaranty loans for construction of alcohol fuel facilities. And finally, a revision of S. 17 on commodity distribution of surplus commodities.

Mr. President, the one title missing is with reference to the target prices. I have discussed at length through my staff and personal conversations with representatives of the National Wheat Growers Association what might be a worthwhile compromise. There has been considerable willingness on the part of the organization to try to come part way on such a compromise—maybe instead of a total freeze, maybe freeze the target prices over a 2-year period which would amount to about a 50-percent freeze. This is still under consideration.

But, Mr. President, there are some portions of the bill that are noncontroversial. The Senator from Mississippi is in the Chamber. He has been a leader in the dairy legislation, for example. That could be passed, I would guess, in a matter of 2 or 3 or 4 hours. There are some amendments. I think the amendments could be dealt with. I would hope that those who have been obstructing consideration of an agriculture bill will let us bring the bill to the floor. It is only 4:30. We have a lot of time yet this evening. I believe we could pass such a farm bill by 9 or 10 o'clock this evening and go to conference tomorrow. I have had some discussion with the chairman of the House Agriculture Committee, and obviously the House Members are anxious to have some legislation passed before the recess.

So, Mr. President, it would seem to me there is still time. The hour is late, but the pressure is great. The pressure will be much greater when those of us leave this Senate Chamber tomorrow or Friday or sometime soon and go back to our States and to our districts.

It is my hope that the Senators who still feel compelled to block consideration of the farm legislation would let us move to the consideration of the bill before us, to amendments and maybe come to some compromise on the target price section which is the one that is controversial and then move on as quickly as we can to pass the legislation. It needs to be done; it should be done, and it can be done. We can do it in a way that will reduce the costs of some of the farm programs and demonstrate to the American taxpayers, the American farmers, and American producers that we are responsible in our approach.

Mr. President, I hope that we might move quickly.

Mr. COCHRAN. Mr. President, will the Senator yield?

Mr. DOLE. I would be happy to yield to the Senator from Mississippi.

Mr. COCHRAN. Mr. President, I compliment the distinguished Senator from Kansas for his leadership in trying to get this legislation to the floor so it can be passed before this recess begins. Particularly, I am hopeful that we can act on the dairy legislation that has been approved by the Senate Agriculture Committee. Earlier this year we had hearings that involved many hours of testimony from industry representatives, consumer groups, and administration officials, all for the purpose of trying to figure out a way to do something about the ever-increasing production surpluses that are occurring in our dairy industry. This is costing the Government a lot of money. Very soon there is going to be another 50-cent assessment imposed on dairy farmers per hundredweight of milk produced. This is going to be in the nature of a tax, and it is not going to do anything about bringing under control the excess production that is causing such a problem.

This bill, while it does not do everything that all persons who are involved want it to do, is certainly a compromise that is workable and will help bring down the excess production. I hope the Senate will come together on this, and if we cannot develop a consensus of support for passing this in a timely manner today or tomorrow—tomorrow may be too late—it will really be a shame because an awful lot of work has been put into this legislation by a lot of Senators, including the Senator from Kansas. I compliment the Senator for his leadership in this area, and I hope the Senate can act on the legislation today.

Mr. MOYNIHAN. Will the Senator yield for a comment?

Mr. DOLE. Let me just comment. I appreciate the comments of the distinguished Senator from Mississippi, who is chairman of the Appropriations Subcommittee, and one who has been an architect of much of this legislation along with other Senators, the distinguished Senator from Minnesota (Mr. BOSCHWITZ), the distinguished Senator from Vermont (Mr. LEAHY), on the Agriculture Committee, but there are a number of others interested in the dairy legislation including the distinguished Senator from New York.

It would seem to me that if everything else fails, we ought to pass the dairy legislation. We ought to do it tonight. The reason I suggest that we ought to move along, I understand that if nothing is going to happen the majority leader very properly will adjourn the Senate this evening and then we are down to the last day tomorrow.

But I still believe there is hope. The one area that sort of bottled us up in addition to a number of amendments that can be disposed of has been the target price discussion. The distinguished Senator from Montana, who is not presently on the floor, Senator MELCHER, does not want any freeze at all. The administration wants a freeze. Now, we believe there is a half-way point that would accommodate in part the administration and in part the wishes of the Senator from Montana and the Senator from Nebraska (Mr. ZORINSKY), the Senator from Alabama (Mr. HEFLIN), and other Senators on each side of the aisle who are concerned that we would be in effect violating an agreement we made to the farmers when we passed the farm bill in 1981. So I would hope that we are going to have an effort yet today by those of use who have a real interest in agriculture to move this bill forward.

I am happy to yield to the Senator from New York.

Mr. MOYNIHAN. It is very kind of the distinguished chairman.

I should like to comment specifically about the remarks of the distinguished Senator from Mississippi, who is chairman of the subcommittee responsible for the dairy bill.

The Senator from Kansas is right. New York is a dairy State. This Senator is a dairy farmer. I know I do not look like a dairy farmer.

I want to emphasize the point that Senator COCHRAN made. The present legislation is a tax on food. It is not a price support. It is in some sense a price support, as the food grains have price supports that present alternatives to the farmer to turn his production over to the Commodity Credit Corporation. But in my State, for example, very few milk farmers do that. They sell their milk as fluid milk; it goes into cheese.

The 50-cent per hundredweight tax goes to the general revenues of the Treasury, and it will become a $1 tax on the 1st of September. I ask the chairman if that is correct

Mr. DOLE. That is correct.

Mr. MOYNIHAN. That is $1 tax on a hundredweight of milk—a tax on food. I do not think there is any equivalent tax in our legislation. I do not believe any food is taxed. That money goes to the general funds of the Treasury.

There are a variety of arrangements, and at least to some of us, the best would be to let the market forces work to bring down the support price and let the consumer get the difference. Since when is the U.S. Government raising revenue by taxing food?

I wonder if the distinguished Senator from Mississippi agrees?

Mr. COCHRAN. Mr. President, if the Senator will yield, the Senator from New York is absolutely correct. This assessment, first of all, does not do anything to help bring down production, decrease production. The 50 cents that the farmer has to pay, or which is collected from the farmer—and soon to be $1—does not help to bring down the consumer costs of the product. As pointed out, the money goes into the Treasury.

This legislation would change that and create an incentive program for decreasing production. Savings could be passed on to processors and ultimately to consumers. It would help increase consumption by making milk more attractive to buy at the store.

Mr. MOYNIHAN. At a time when the administration is appointing a commission on hunger.

I have had occasion many times on this floor to say things admiring and beyond even normal levels of admiration about the Senator from Kansas. Such is his devotion to a farm bill that the Senator from Mississippi and the Senator from New York can talk about getting rid of revenues that go into the Treasury, without fear that this will automatically set off alarm bells in the Senator from Kansas. That is how much he wants a farm bill. That is how much a Kansan he is, and that is one of the reasons we admire him so.

Mr. DOLE. We also produce some dairy products in the State of Kansas.

Mr. President, I share the view expressed by both Senators.

Years ago, we used to have a bread tax. It was called a wheat certificate plan. That finally met its timely demise. It was not quite parallel to the assessment the dairy farmer pays.

I hope that, before the majority leader decides to abandon all hope for anything happening today, those who are—I do not say obstructing the legislation, but indicating that they would prefer that we did not bring it up, might have an opportunity to come to the floor. I just mentioned Senator LEAHY as one of the architects of the dairy program. I think there are enough of us here to be able to get together in the next couple of hours to stir up enough interest in this possible solution to the dilemma we are facing, before adjourning without passing legislation.

Mr. BOSCHWITZ. Mr. President, will the Senator yield?

Mr. DOLE. I yield.

Mr. BOSCHWITZ. Mr. President, I yield to the Senator from Vermont.

Mr. LEAHY. Mr. President, I join in what the Senator from Kansas has said, in the hope that we might bring up this dairy package.

I see the distinguished Senator from Kansas (Mr. DOLE), the distinguished Senator from Minnesota (Mr. BOSCHWITZ), and the distinguished Senator from Mississippi (Mr. COCHRAN) on the floor—all of whom have worked extremely hard to try to fashion a bipartisan package acceptable to the administration on dairy, as has the distinguished Senator from Kentucky (Mr. HUDDLESTON) and others on this side.

I hate to even think of the number of meetings we have had over the last few weeks in Senator BOSCHWITZ' office, in my office, and on one occasion in the Vice President's office. Secretary Block has been up here, and we have met until we formed a bipartisan package that seems to have enough support to pass here.

We have worked with the distinguished chairman and the ranking minority member of the appropriate House subcommittee, Mr. HARKINS and Mr. JEFFORDS, in getting their support, and the distinguished chairman of the Agriculture Committee, Mr. DE LA GARZA, to get support for a bipartisan consensus, knowing that it was not the perfect package on dairy—nothing that everybody can totally like.

The dairy farmers throughout the country will have to make some cuts. In some instances, serious efforts will be made to cut down overproduction.

We have tried to have everybody share the burden evenly, to put together a package to save the taxpayers' money, cut production, and take steps to increase consumption.

We have a good package. If it passes now, there is still a possibility that we can get it through the House and to the President, to be signed.

I share the feeling of my colleagues that we are in the 11th hour and 59th minute. I am perfectly willing to stay here all night, if we can get this package out.

I see my distinguished senior colleague from Vermont, Senator STAFFORD, who is eager to stay here all night, if need be, so that we can go

back to Vermont and tell the farmers what we have.

Mr. STAFFORD. I say to the Senator that he always knows my mental process.

Mr. BOSCHWITZ. I thank the Senator. The Senator from Vermont has indeed been very instrumental in trying to get the dairy package passed.

The Senator from New York was very expansive in his comments about the Senator from Kansas. I will not be. I could say a few nice things about his wife, perhaps. After he gets all this worked out, because I admire his ability to do these things, I will be more than expansive. Certainly, his services in getting some resolution of this matter are extremely critical, and I know he is trying.

It would be a shame if we were unable to work out some type of arrangement on wheat and the other commodities that would be affected by the target price freeze.

In so doing and not working out those arrangements we, in effect, put an additional 50-cent assessment or tax, as it is sometimes called, on the one-third of a million dairy farmers and their families in this country.

To put another 50-cent assessment, making a total of $1, on those products at this time is a very severe penalty indeed to impose upon the farmers who work hard at making a few dollars. It is a hard life to be a dairy farmer and to have to arrive very promptly in the morning and very promptly in the afternoon, not just 5 days a week, but 7, and in the process of doing so provide the most essential and basic food that we have to offer this Nation.

So, I really do ask the Senator from Montana, who is not here at the present time, and others, who are debating and prolonging the debate on the freeze of target prices on wheat if we cannot reach some form of accommodation. It would be difficult for me. We are a large wheat-producing State as well. I wish to protect my wheat farmers as much as they wish to protect theirs. But I do not want to do it at the expense of another segment of agriculture. It is a bad thing to pit one area of agriculture against the other for the purpose of trying to bring about a result.

So I appreciate Senator DOLE's efforts. I appreciate the efforts of my friends from Vermont and also Senator COCHRAN of Mississippi, who did yeoman work, and who is chairman of the subcommittee that deals with dairy price supports and other price supports in agriculture.

Mr. President, it is interesting that the farmers of this country create themselves a problem by being so efficient, and perhaps we could do something about that. I do not know what offhand. But whenever we seem to put constraints on them they become more efficient.

So I hope that the Senator from Montana, my friends from Oklahoma, Alabama, and others, will be forthcoming in their efforts to bring about some kind of solution to this problem so a new assessment, a new tax will not have to be levied on another segment of agriculture.

Mr. DOLE. Mr. President, again I would hope that those Senators who have been unwilling to let us proceed in this matter would perhaps be willing to sit down with Members on both sides; otherwise, I am fearful that we may adjourn or recess for the evening, and that leaves almost an impossible task to try to come to grips with the whole package because there are a number of amendments that are even amendments to the dairy section which I think could be handled rather quickly and voted up or down, and there are also amendments to other sections on sugar and other related areas that I assume those who want to offer those amendments want to do so with record votes.

I am fearful if we go away this evening without having at least had a chance to consider the bill, then I would guess that the chances are less than 1 in 100 of doing it tomorrow.

Mr. LEAHY. Mr. President, if the Senator will yield on that point, the Senator from Kansas is absolutely correct. I cannot emphasize enough to my colleagues how hard Senators on both sides of the aisle worked to put this compromise together and worked with Members of the other body to put this compromise together. It has not been an easy thing. We brought the industry in and everyone else and finally forged this compromise.

I cannot believe we could do it again. Certainly we could not do it again after the next 50-cent assessment might go into effect.

It becomes more than just a legislative exercise. There are an awful lot of farmers out there, individual family farms. These are not large corporate entities by any means. Those dairy farmers we are talking about, whatever State they are in, Vermont, Minnesota, Wisconsin, or California, or anywhere else, are predominantly individual family farms.

Unless they are given a program in advance of this plan or the possible second 50-cent assessment, unless they are given a program that they can plan for, one that goes over the number of months that this one does, a lot of them are going to go out of business. It is going to be just a series of one after another of individual tragedies, family tragedies, tragedies of people who I think are among the hardest working people in this country.

So I join with the Senator from Kansas in urging and actually pleading with my colleagues that this matter might go forward.

If it requires us to stay here to inconvenience ourselves a little bit tonight to stay longer and do it, then we should because that inconvenience will be nothing compared to what some of these families will have to face.

Mr. DOLE. Mr. President, I thank the distinguished Senator from Vermont. I do not know of anything else that needs to be said at this time, but I hope that the distinguished majority leader might wait 20 or 30 minutes to see if there might be some indication from the distinguished Senator from Montana (Mr. MELCHER) and others if there is a willingness to try to sit down and work out the target price area; if not, what we might do with the remainder of it yet this evening.

Mr. President, I wish to indicate that I know the distinguished chairman of the committee, Senator HELMS, and the distinguished ranking minority member of the committee, Senator HUDDLESTON, are in accord. They are ready to go and have been ready to go. They may not agree with every provision but at least they are ready to take it up and they have been ready for the past couple of weeks.

Senator HELMS has authorized certain of us on our side to speak to certain sections, and it happens to be that the feedgrain and wheat section is one that is probably the fly in the ointment at this period. But I think I can express without reservation the willingness of the chairman of the committee and the ranking minority member, Senator HUDDLESTON, to proceed tonight, tomorrow, tomorrow night, or whatever.

MESSAGES FROM THE HOUSE

At 2:42 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3329) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1984, and for other purposes; it recedes from its disagreement to the amendments of the Senate numbered 10, 14, 30, 47, 49, and 55 to the bill, and agrees thereto, it recedes from its disagreement to the amendments of the Senate numbered 1, 2, 3, 28, 36, 39, 41, 53, 60, 61, 64, 65, 66, 67, 69, and 70 to the bill, each with an amendment in which it requests the concurrence of the Senate; and it insists upon its disagreement to the amendment of the Senate numbered 21 to the bill.

The message also announced that the House has passed the following

bill, in which it requests the concurrence of the Senate:

H.R. 3706. An act to amend title 5, United States Code, to make the birthday of Martin Luther King, Jr., a legal public holiday.

ENROLLED BILLS SIGNED

At 3:18 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 727. An act to authorize the Secretary of the Interior to set aside certain judgment funds of the Three Affiliated Tribes of Fort Berthold Reservation in North Dakota, and for other purposes; and

H.R. 2973. An act to promote economic revitalization and facilitate expansion of economic opportunities in the Caribbean Basin region, to provide for backup withholding of tax from interest and dividends, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. THURMOND).

HOUSE MEASURE PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3706. An act to amend title 5, United States Code, to make the birthday of Martin Luther King, Jr., a legal public holiday.

ENROLLED BILL PRESENTED

The Secretary reported that on today, he had presented to the President of the United States the following enrolled bill:

S. 727. An act to authorize the Secretary of the Interior to set aside certain judgment funds of the Three Affiliated Tribes of Fort Berthold Reservation in North Dakota, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1547. A communication from the Principal Deputy Assistant Secretary of the Navy (Shipbuilding and Logistics), transmitting, pursuant to law, a report on the conversion of the laundry services function at the Naval Hospital, San Diego, Calif., to performance under contract; to the Committee on Armed Services.

EC-1548. A communication from the Director of the Defense Security Assistance Agency, transmitting, pursuant to law, a report on the Department of the Army's proposed letter of offer to Saudi Arabia for defense articles estimated to cost in excess of $50 million; to the Committee on Armed Services.

EC-1549. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Rental Rehabilitation With Limited Federal Involvement: Who Is Doing It? At What Cost? Who Benefits?"; to the Committee on Banking, Housing, and Urban Affairs.

EC-1550. A communication from the Acting Director of the Minerals Management Service, transmitting, pursuant to law, a request for repayment of excess royalty payments by Shell Oil Co.; to the Committee on Energy and Natural Resources.

EC-1551. A communication from the Acting Director of the Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a request for repayment of excess royalty payments by Arco Oil & Gas Co.; to the Committee on Energy and Natural Resources.

EC-1552. A communication from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting, pursuant to law, a report on the continuation of commercial, cultural, and other relations between the United States and Taiwan; to the Committee on Foreign Relations.

EC-1553. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the 60-day period prior to July 28, 1983; to the Committee on Foreign Relations.

EC-1554. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 5-60, adopted by the Council on July 5, 1983; to the Committee on Governmental Affairs.

EC-1555. A communication from the Director of the Office of the Congressional Budget Office, transmitting, pursuant to law, a report entitled "Modifying the Davis-Bacon Act: Implications for the Labor Market and the Federal Budget"; to the Committee on Labor and Human Resources.

EC-1556. A communication from the Health Resources and Services Administration, Public Health Service, Department of Health and Human Services, transmitting, pursuant to law, notification of academic year 1983-84 allotments to schools participating in the health professions student loan program; to the Committee on Labor and Human Resources.

EC-1557. A communication from the Assistant Attorney General (Office of Legislative Affairs), transmitting a draft of proposed legislation to amend certain provisions applicable to compensation for the overtime inspectional service of employees of the U.S. Customs Service and the Immigration and Naturalization Service, and for other purposes; to the Committee on Governmental Affairs.

EC-1558. A communication from the Director of the Information Security Oversight Office, General Services Administration, transmitting, pursuant to law, the annual report of the office for fiscal year 1982; to the Committee on Governmental Affairs.

EC-1559. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the sixth annual report on the Premerger notification program; to the Committee on the Judiciary.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-353. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance:

"SENATE JOINT RESOLUTION No. 1

"Whereas, In the administration of federally funded public assistance programs by the states, including the State of California, personal information is secured concerning applicants and recipients under these programs; and

"Whereas, The federal Social Security Act and related administrative regulations limit the use and disclosure of this information by the states to specified purposes relating exclusively to the administration of public assistance programs; and

"Whereas, These restrictions prevent the states from using this information in their efforts to enforce the law and protect the public welfare in various criminal and civil contexts not directly related to the administration of public assistance programs; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorialize the President and the Congress of the United States to amend the Social Security Act to provide that personal information concerning applicants and recipients secured by the states, and their political subdivisions, in the administration of federally funded public assistance programs may be used or disclosed pursuant to a criminal proceeding brought on behalf of the people of the State of California or on behalf of the United States government, provided a warrant has been issued upon probable cause and provided that a nexus exists between the crime or crimes alleged and the information sought, and that reasonable efforts have been made to verify that the person under suspicion is the applicant or recipient; and be it further

"Resolved, That the information so disclosed be the least amount of information reasonably consistent with achievement of the purpose to be served; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DURENBERGER, from the Committee on Governmental Affairs, with amendments:

S. 1090. A bill to establish a National Outdoor Recreation Resources Review Commission to study and recommend appropriate policies and activities for government agencies at the Federal, State, and local levels and for the private sector, to assure the continued availability of quality outdoor recreation experiences in America to the year 2000, and for other purposes; pursuant to the order of May 25, 1983, referred to the Committee on Energy and Natural Resources for not to exceed sixty calendar days.

By Mr. DURENBERGER, from the Committee on Governmental Affairs, without amendment:

S. Res. 193. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consider-

ation of S. 1090; referred to the Committee on the Budget.

By Mr. DURENBERGER, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 1510. A bill to establish uniform single financial audit requirements for State and local governments and nonprofit organizations and other recipients of Federal assistance, and for other purposes.

By Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

S. 1729. An original bill to provide for the striking and presentation of medals.

By Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

S. Res. 194. An original resolution waiving section 402(a) of the Congressional Budget Act with respect to the consideration of S. 1729; referred to the Committee on the Budget.

By Mr. D'AMATO, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

S. 414. A bill to amend and clarify the Foreign Corrupt Practices Act of 1977 (Rept. No. 98-207).

By Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 1015. A bill to clear certain impediments to the licensing of the vessel *La Jolie* for employment in the coastwise trade;

S. 1186. A bill to clear certain impediments to the licensing of the yacht *Dad's Pad* for employment in the coastwise trade; and

S. 1689. A bill to clear certain impediments to the licensing of the vessel *Endless Summer* for employment in the coastwise trade.

By Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

H.R. 2840. An act to provide for the orderly termination of Federal management of the Pribilof Islands, Alaska.

By Mr. STAFFORD, from the Committee on Environment and Public Works, without amendment:

S. 1465. A bill to designate the Federal Building at Fourth and Ferry Streets, Lafayette, Ind., as the "Charles A. Halleck Federal Building".

By Mr. STAFFORD, from the Committee on Environment and Public Works, with an amendment:

S. 1724. A bill to designate the Federal Building at Las Cruces, N.M., as the "Harold L. Runnels Federal Building".

By Mr. STAFFORD, from the Committee on Environment and Public Works, without amendment:

H.R. 2895. An act to designate the Federal Building and U.S. Courthouse at 450 Golden Gate Avenue, San Francisco, Calif., as the Phillip Burton Federal Building and U.S. Courthouse.

By Mr. ROTH, from the Committee on Governmental Affairs, without amendment:

S. 1052. A bill to make certain changes in the membership and operations of the Advisory Commission on Intergovernmental Relations.

By Mr. PERCY, from the Committee on Foreign Relations:

Supplement Report to Report No. 98-156 on S. 602, the Radio Broadcasting to Cuba Act.

Mr. PERCY. Mr. President, in accordance with rule XXVI, paragraph 11, subparagraph (c)(B) of the Standing Rules of the Senate, I am today filing a correction of a technical error in the Senate Foreign Relations Committee Report (Report No. 98-156) that accompanies S. 602, the Radio Broadcasting to Cuba Act, reported favorably by the committee on June 21, 1983.

My technical correction would add one sentence to the required report language evaluating the regulatory impact of the reported legislation. That sentence states that

All provisions of Rule XXVI, paragraph 11 not complied with were impracticable because of uncertainties concerning the possibility of any interference with broadcasting in the United States that might result from Radio Broadcasting to Cuba as provided in the bill.

I note that such a statement is required by rule XXVI.

The committee report was reviewed in detail by members of the majority and minority staff. Implicit in committee discussion of S. 602 was the understanding that until Radio Broadcasting to Cuba programing was established, until decisions concerning broadcast frequencies, and until the Board for International Broadcasting had the opportunity to study the nature of potential interference that might from Radio Broadcasting to Cuba as provided in the Radio Broadcasting to Cuba Act, it was impracticable to make an accurate assessment of the full regulatory impact of the facility compensation provision of the bill or of its potential costs. The committee insisted on a small initial level of funding for facility compensation because of these uncertainties. It insisted that such compensation be provided only after Radio Broadcasting to Cuba had commenced and its impact could be assessed accurately. It was understood in our discussions that regulations would be required, as we have stated in the committee report. Implicit in discussions was the understanding that information concerning the posible impact of interference from Cuban retaliatory broadcasting, and therefore the impact on individuals, businesses, the economic well-being of businesses the personal privacy of individuals, or the volume of paperwork involved in assessing such impact was impracticable until certain decisions about the scope of Radio Broadcasting to Cuba operations were made.

The committee report stands in technical error for not including the sentence I am submitting today. However, the Members were fully apprised of the impracticability of a more detailed, accurate assessment either of the possible extent of costs or of the regulatory impact of the provisions for facility compensation included in the bill. I believe the corrective sentence I am submitting today in accordance with rule XXVI, paragraph 11, subparagraph (c)(B) corrects by any deficiencies in the report submitted by the committee.

In addition. I am filing a revised cost estimate from the Congressional Budget Office. Their original cost estimate was in error in that it assumed outlays in fiscal year 1984. The bill passed by the committee is clear that funds shall not be available until October 1, 1984, for facility compensation.

I also submit minority views to these revisions as presented by Senator ZORINSKY.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. McCLURE, from the Committee on Energy and Natural Resources:

William Patrick Collins, of Virginia, to be Under Secretary of Energy.

By Mr. STAFFORD, from the Committee on Environment and Public Works:

Howard M. Messner, of Maryland, to be an Assistant Administrator of the Environmental Protection Agency.

Alvin L. Alm, of Massachusetts, to be Deputy Administrator of the Environmental Protection Agency.

Frederick M. Bernthal, of Tennessee, to be a Member of the Nuclear Regulatory Commission for the term of five years expiring June 30, 1988.

By Mr. HATCH, from the Committee on Labor and Human Resources:

A. Wayne Roberts, of Massachusetts, to be Deputy Under Secretary for Intergovernmental and Interagency Affairs, Department of Education.

By Mr. DOLE, from the Committee on Finance:

Thomas J. Healey, of New Jersey, to be an Assistant Secretary of the Treasury.

Susan Wittenburg Liebeler, of California, to be a Member of the United States International Trade Commission for the remainder of the Term expiring December 16, 1988.

Seeley Lodwick, of Iowa, to be a Member of the United States International Trade Commission for the term expiring December 16, 1991.

By Mr. THURMOND, from the Committee on the Judiciary:

James F. Mervow, of Virginia, to be a judge of the U.S. Claims Court for a term of 15 years;

Robert J. Yock, of Virginia, to be a judge of the U.S. Claims Court for a term of 15 years;

Marvin Katz, of Pennsylvania, to be U.S. district judge for the eastern district of Pennsylvania;

James McGirr Kelly, of Pennsylvania, to be U.S. district judge for the eastern district of Pennsylvania;

Thomas N. O'Neill, of Pennsylvania, to be U.S. district judge for the eastern district of Pennsylvania;

By Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs:

Warren T. Lindquist, of Maine, to be an Assistant Secretary of Housing and Urban Development. .

(The above nomination was reported from the Committee on Banking, Housing, and Urban Affairs with the recommendation that it be confirmed,

subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. TOWER, from the Committee on Armed Services:

Mr. TOWER. From the Committee on Armed Services, I report favorably the following nominations: In the Army Reserve there are 14 appointments to the grades of major general and brigadier general (list begins with Robert O. Bugg) and in the Army National Guard there are 21 appointments to the grade of major general and brigadier general (list begins with William J. Jefferds). I ask that these names be placed on the Executive Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. In addition, in the Air Force there are 341 appointments to the grade of second lieutenant (list begins with Howard L. Alford), in the Navy and Naval Reserve there are 22 appointments to the grade of commander and below (list begins with Steven C. Cox), in the Navy there are 111 permanent appointments to the grade of chief warrant officer (list begins with Johnny F. Barfield) and in the Army there are 929 permanent promotions to the grade of colonel (list begins with Robert O. Abney). Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of July 25 and July 28, 1983, at the end of Senate proceedings.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs:

S. 1729. An original bill to provide for the striking and presentation of medals; from the Committee on Banking, Housing, and Urban Affairs; placed on the calendar.

By Mr. DIXON (for himself, Mr. KASTEN, Mr. TSONGAS, Mr. SASSER, Mr. MOYNIHAN, Mr. FORD, Mr. HATCH, Mr. RIEGLE, Mr. PELL, Mr. LEAHY, Mr. ARMSTRONG, Mr. BOREN, Mr. METZENBAUM, Mr. ANDREWS, Mr. SARBANES, Mr. ABDNOR, Mr. BOSCHWITZ, Mr. HUDDLESTON, Mr. MITCHELL, and Mr. PRYOR):

S. 1730. A bill to amend the Small Business Act to increase small business participation in the procurement process, thereby reducing costly noncompetitive procurements and increasing defense preparedness, and for other purposes; to the Committee on Small Business.

By Mr. BAUCUS:

S. 1731. A bill for the relief of Yuk Chuen Leung; to the Committee on the Judiciary.

By Mr. SPECTER:

S. 1732. A bill to amend the Internal Revenue Code of 1954 to increase the energy investment tax credit for conversions to coal-fueled facilities, and for other purposes; to the Committee on Finance.

By Mr. TRIBLE:

S. 1733. A bill to amend title 18, United States Code, to make a crime the use, for fraudulent or other illegal purposes, of any computer owned or operated by the United States, certain financial institutions, and entities affecting interstate commerce; to the Committee on the Judiciary.

By Mr. ZORINSKY (for himself, Mr. PRYOR, Mr. PRESSLER, Mr. JOHNSTON, and Mr. ABDNOR):

S. 1734. A bill to amend title 17 of the United States Code with respect to public performances of nondramatic musical works by means of coin-operated phonorecord players, and for other purposes; to the Committee on the Judiciary.

By Mr. GORTON (for himself and Mr. JACKSON):

S. 1735. A bill entitled the "Shoalwater Bay Indian Tribe-Dexter By the Sea Claim Settlement Act"; to the Select Committee on Indian Affairs.

By Mr. DURENBERGER:

S. 1736. A bill to establish a process that provides for the submission to the Congress each year of a regulatory budget that recommends the costs to be incurred during the fiscal year beginning on October 1 of such year by specified economic sectors in complying with the laws of the United States and the rules promulgated thereunder, and for consideration by the Congress of a bill containing proposals for legislation to implement such regulatory budget; to the Committee on Governmental Affairs.

By Mr. DOLE (for himself, Mr. BIDEN, Mr. HEINZ, Mr. ROTH, Mr. D'AMATO, Mrs. HAWKINS, Mr. CRANSTON, Mr. DURENBERGER, Mr. TOWER, Mr. BRADLEY, and Mr. BENTSEN):

S. 1737. A bill to make permanent section 1619 of the Social Security Act, which provides SSI benefits for individuals who perform substantial gainful activity despite a severe medical impairment; to the Committee on Finance.

By Mr. DURENBERGER (for himself, Mr. SYMMS, Mr. BOREN, Mr. GRASSLEY, Mr. ZORINSKY, and Mr. MELCHER):

S. 1738. A bill to amend the Internal Revenue Code of 1954 to permit small businesses to reduce the value of excess inventory; to the Committee on Finance.

By Mr. ABDNOR (for himself and Mr. MOYNIHAN):

S. 1739. A bill to authorize the U.S. Army Corps of Engineers to construct various projects for improvements to rivers and harbors of the United States, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BINGAMAN:

S. 1740. A bill entitled the "San Juan Basin Wilderness Protection Act of 1983"; to the Committee on Energy and Natural Resources.

By Mr. HART (for himself and Mr. KENNEDY):

S. 1741. A bill to halt the introduction of U.S. combat units into Central America without the approval of Congress; to the Committee on Foreign Relations.

By Mr. MELCHER (for himself and Mr. INOUYE):

S. 1742. A bill to amend title 38, United States Code, to provide hospital, nursing home, and domiciliary care and medical services to certain persons who participated in armed conflict with an enemy of the United States while serving during World War II in the former First Special Service Force, a joint military unit of the United States and Canada; to the Committee on Veterans' Affairs.

By Mr. PELL:

S. 1743. A bill to amend the Tariff Schedules of the United States to suspend for a three-year period the duty on certain benzenoid chemicals (NA-125 and NA-125-Chloride); to the Committee on Finance.

By Mr. MELCHER:

S. 1744. A bill to provide a pilot project for excellence in elementary and secondary education; to the Committee on Labor and Human Resources.

By Mr. SYMMS (for himself, Mr. DURENBERGER, and Mr. MATSUNAGA):

S. 1745. A bill to amend the Internal Revenue Code of 1954 to provide certain physicians' and surgeons' mutual protection associations with tax-exempt status for certain purposes, and for other purposes; to the Committee on Finance.

By Mr. RUDMAN:

S. 1746. A bill to require that the Federal Government procure from the private sector of the economy the goods and services necessary for the operations and management of certain Government agencies and that the Director of the Office of Management and Budget and the Comptroller General of the United States identify the activities of the Federal Government to produce, manufacture, or otherwise provide goods and services which should be provided by the private sector and prepare a schedule for transferring such activities to the private sector; to the Committee on Governmental Affairs.

By Mr. ARMSTRONG (for himself, Mr. COHEN, Mr. HOLLINGS, Mr. MATSUNAGA, Mr. CRANSTON, Mr. BRADLEY, Mr. D'AMATO, Mr. DECONCINI, Mr. DOLE, Mr. HART, Mrs. HAWKINS, Mr. KASTEN, Mr. KENNEDY, Mr. MITCHELL, and Mr. BOSCHWITZ):

S. 1747. A bill to amend title 38, United States Code, to establish two new programs of educational assistance for veterans of peace-time service, to close the Post-Vietnam Era Veterans' Educational Assistance program to new participants, and to repeal the December 31, 1989, termination date of the Vietnam-era GI Bill, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. EAST (for himself and Mr. DENTON):

S. 1748. A bill to amend the National Labor Relations Act to apply explicitly the right-to-work laws of a State to Federal enclaves within the boundaries of that State; to the Committee on Labor and Human Resources.

By Mr. THURMOND (for himself, Mr. BAKER, Mr. HOLLINGS, Mr. HELMS, Mr. EAST, Mr. TRIBLE, and Mr. CHILES):

S. 1749. A bill to grant the consent of the Congress to the Southeast Interstate Low-Level Radioactive Waste Management Compact; to the Committee on the Judiciary.

By Mr. HEINZ (for himself, Mr. GARN, Mr. TOWER, and Mr. MATTINGLY):

S. 1750. A bill to effectuate the congressional directive that accounts established under section 327 of the Garn-St Germain Depository Institutions Act of 1982 be directly equivalent and competitive with money market mutual funds; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CRANSTON:

S. 1751. A bill to amend certain Federal laws to prohibit age discrimination; to the Committee on Labor and Human Resources.

S. 1752. A bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to prohibit age discrimination in the administration of pension plans; to the Committee on Finance.

S. 1753. A bill to amend the Internal Revenue Code of 1954 to provide incentives for part-time and full-time employment of older workers; to the Committee on Finance.

By Mr. BENTSEN (for himself and Mr. TOWER):

S. 1754. A bill to direct the Secretary of Agriculture to convey, without consideration, to the Sabine River Authority of Texas approximately 34,000 acres of land within the Sabine National Forest, Texas, to be used for the purposes of the Toledo Bend Project, Louisiana and Texas; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SPECTER:

S. 1755. A bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA), to create a trust fund for the reclamation of underground mines and surface mines and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DURENBERGER:

S. 1756. A bill to provide for assistance to State and local governments and private interests for conservation of certain rivers, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. LUGAR (for himself, Mr. BIDEN, Mr. DODD, Mr. DOLE, Mr. DOMENICI, Mr. DURENBERGER, Mr. HATCH, Mr. HELMS, Mr. HUDDLESTON, Mr. JOHNSTON, Mr. KENNEDY, Mr. LAXALT, Mr. MOYNIHAN, Mr. MURKOWSKI, Mr. PELL, Mr. PRESSLER, Mr. QUAYLE, Mr. ZORINSKY, Mr. COHEN, and Mr. TSONGAS):

S. 1757. A bill to provide for the establishment of United States diplomatic relations with the Vatican; to the Committee on Foreign Relations.

By Mr. BENTSEN (for himself, Mr. WALLOP, Mr. SYMMS, Mr. BRADLEY, Mr. GRASSLEY, Mr. MITCHELL, Mr. DURENBERGER, and Mr. BAUCUS):

S. 1758. A bill to amend the Internal Revenue Code of 1954 to provide a simplified cost recovery system based on recovery accounts, and for other purposes; to the Committee on Finance.

By Mr. SYMMS:

S. 1759. A bill to extend for three years the suspension of duty on 4-chloro-3-methylphenol; to the Committee on Finance.

By Mr. BENTSEN:

S. 1760. A bill entitled the "Pension Correction Act of 1983"; to the Committee on Finance.

By Mr. MOYNIHAN (for himself, Mr. WALLOP, and Mr. SYMMS):

S. 1761. A bill to amend the Internal Revenue Code to permit foreign pension plans to invest in the United States on a nontaxable basis; to the Committee on Finance.

By Mr. MELCHER:

S.J. Res. 143. Joint resolution to authorize and request the President to issue a proclamation designating the calendar week beginning with Sunday, June 3, 1984, as "National Garden Week"; to the Committee on the Judiciary.

By Mr. SASSER (for himself, Mr. BAKER, Mr. BAUCUS, Mr. BENTSEN, Mr. BUMPERS, Mr. COCHRAN, Mr. DOLE, Mr. DOMENICI, Mr. HATCH, Mr. LONG, Mr. MATTINGLY, and Mr. STENNIS):

S.J. Res. 144. Joint resolution designating September 5, 1983, as "National Beale Street, Home-of-the-Blues Day" to commemorate the redevelopment of the historic area where W. C. Handy, originator of the famous music form known as the "Blues", composed the "Memphis Blues" some seventy years ago; to the Committee on the Judiciary.

By Mr. LONG (for himself, Mr. JOHNSTON, Mr. HEFLIN, Mr. THURMOND, Mr. GLENN, Mr. BRADLEY, Mr. TSONGAS, Mr. MOYNIHAN, Mr. MATTINGLY, Mr. HEINZ, Mr. BENTSEN, Mr. GORTON, Mr. HOLLINGS, Mr. INOUYE, Mr. TOWER, Mr. FORD, Mr. WARNER, Mr. LUGAR, and Mr. DURENBERGER):

S.J. Res. 145. Joint resolution to designate the week of October 2, 1983 through October 8, 1983, as "National Port Week"; to the Committee on the Judiciary.

By Mr. HEINZ (for himself, Mr. PELL, Mr. ABDNOR, Mr. HOLLINGS, Mr. KENNEDY, Mr. MATTINGLY, Mr. DECONCINI, Mr. FORD, Mr. STENNIS, Mr. BRADLEY, Mr. HATFIELD, Mr. LONG, Mr. TOWER, Mr. GARN, Mr. TSONGAS, Mr. LAUTENBERG, Mr. BENTSEN, Mr. COHEN, Mr. GLENN, Mr. SPECTER, Mr. CHAFEE, Mr. PRESSLER, Mr. HATCH, Mr. ZORINSKY, Mr. GOLDWATER, Mr. COCHRAN, Mr. JOHNSTON, Mr. SARBANES, Mr. PACKWOOD, Mr. BAUCUS, and Mr. PERCY):

S.J. Res. 146. Joint resolution to designate March 23, 1984, as "National Energy Education Day"; to the Committee on the Judiciary.

By Mr. WEICKER (for himself, Mr. RANDOLPH, Mr. STAFFORD, Mrs. HAWKINS, Mr. NICKLES, Mr. MATSUNAGA, and Mr. KENNEDY):

S.J. Res. 147. Joint resolution to designate the week of September 25, 1983, through October 1, 1983, as "National Rehabilitation Facilities Week"; to the Committee on the Judiciary.

By Mr. KENNEDY (for himself, Mr. HOLLINGS, Mr. DURENBERGER, Mr. GLENN, Mr. BURDICK, Mr. STENNIS, Mr. DOLE, Mr. DECONCINI, Mr. RANDOLPH, Mr. HEINZ, Mr. SASSER, Mr. MATSUNAGA, Mr. MITCHELL, Mr. SYMMS, Mr. TSONGAS, Mr. NUNN, Mr. ZORINSKY, Mr. INOUYE, and Mr. HUDDLESTON):

S.J. Res. 148. Joint resolution to designate the week of May 6, 1984, through May 13, 1984, as "National Tuberous Sclerosis Week"; to the Committee on the Judiciary.

By Mr. HUDDLESTON (for himself, Mr. COCHRAN, Mr. MELCHER, Mr. BOSCHWITZ, Mr. LEAHY, Mr. EAGLETON, and Mr. HEFLIN):

S.J. Res. 149. Joint resolution to temporarily suspend the authority of the Secretary of Agriculture under the milk price support program, to impose a second 50-cent per hundredweight deductions from the proceeds of the sale of all milk marketed commercially in the United States; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SIMPLE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DURENBERGER, from the Committee on Governmental Affairs:

S. Res. 193. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1090; referred to the Committee on the Budget.

By Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs:

S. Res. 194. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1729; referred to the Committee on the Budget.

By Mr. DODD (for himself, Mr. HOLLINGS, Mr. PELL, Mr. BENTSEN, Mr. MATHIAS, Mr. KENNEDY, Mr. MELCHER, Mr. CHILES, Mr. TSONGAS, Mr. LAUTENBERG, Mr. BUMPERS, Mr. EAGLETON, Mr. INOUYE, Mr. BINGAMAN, Mr. BIDEN, Mr. SARBANES, Mr. LEVIN, Mr. DIXON, Mr. BRADLEY, Mr. BURDICK, Mr. RANDOLPH, and Mr. WEICKER):

S. Con. Res. 60. A concurrent resolution urging the Secretary of Education to postpone further action on reorganization of certain programs in the Department of Education until a study by the General Accounting Office determines that such reorganization would not reduce the ability of the Department of Education to achieve the goals intended by Congress when it authorized the affected programs; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DIXON (for himself, Mr. KASTEN, Mr. TSONGAS, Mr. SASSER, Mr. MOYNIHAN, Mr. FORD, Mr. HATCH, Mr. RIEGLE, Mr. PELL, Mr. LEAHY, Mr. ARMSTRONG, Mr. BOREN, Mr. METZENBAUM, Mr. ANDREWS, Mr. SARBANES, Mr. ABDNOR, Mr. BOSCHWITZ, Mr. HUDDLESTON, Mr. MITCHELL, and Mr. PRYOR):

S. 1730. A bill to amend the Small Business Act to increase small business participation in the procurement process, thereby reducing costly noncompetitive procurements and increasing defense preparedness, and for other purposes; to the Committee on Small Business.

(The remarks of Mr. DIXON and the text of the legislation appear earlier in today's RECORD.)

By Mr. BAUCUS:

S. 1731. A bill for the relief of Yuk Chuen Leung; to the Committee on the Judiciary.

RELIEF OF YUK CHUEN LEUNG

● Mr. BAUCUS. Mr. President, today I am introducing a bill for the relief of

Yuk Chuen Leung, a native of China who is currently residing in Billings, Mont. Mr. Leung has been in the United States since 1971 and has established himself as an independent businessman in this country. He has repeatedly tried to obtain legal status as a permanent resident of this country, but due to technicalities, he has been exhausted, and congressional relief is his only remaining option.

Mr. Leung now owns a cafe in Montana and has invested considerable time and effort in making it a profitable enterprise. I am told he is quite a chef and has been a model citizen in the community. It has been attested by the citizens of Billings that he is a man of good moral character; that he is honest and intelligent; that he gets along well with people; and that he has never had any trouble with law enforcement authorities. In addition, he has never been on welfare, having paid all necessary taxes since his arrival here in 1971. In my opinion, Mr. Leung has shown himself to be a useful and desirable member of the Billings community in which he lives.

Mr. Leung arrived in this country aboard a ship on which he was serving as a crewman. When the ship returned to Hong Kong, he did not depart with it. Although he was forced to leave his wife and children behind, he felt that America was the land of opportunity where he could make a decent living for himself. Since his arrival, he has consistently shown the spirit of industriousness for which we Americans so pride ourselves. He came here with literally nothing but the clothes on his back, ventured to the great State of Montana, and has succeeded in becoming an independent businessman who is offering a valuable service for the enjoyment of others.

Mr. President, I believe Mr. Leung's situation warrants a humanitarian response. It would be a travesty to deport a man who has become a model citizen—one who has earned his keep and has never asked anything of this country other than a chance to enjoy the same freedoms that all Americans enjoy. He has built a business from the ground up and without our intervention. If he is deported, all that Mr. Leung has worked for these past 12 years will evaporate. He will be returned to Hong Kong with nothing to show for all his hard work.

Mr. Leung's efforts to sell his business have thus far not met with success. There appears to be no one in Billings, Mont., with Mr. Leung's particular culinary skills and no one who will be able to offer a similar service. His deportation will therefore harm not only him as an individual, but also all the members of the Billings community who visit and enjoy his cafe.

With these factors in mind, I urge my colleagues to give careful consideration to Mr. Leung's case and the legislation that would provide him with the status of a permanent resident.●

By Mr. SPECTER:

S. 1732. A bill to amend the Internal Revenue Code of 1954 to increase the energy investment tax credit for conversions to coal-fueled facilities, and for other purposes; to the Committee on Finance.

TAX CREDIT FOR COAL CONVERSIONS

Mr. SPECTER. Mr. President, today I am introducing a comprehensive bill to help the coal industry recover from the present economic slump. Improvements to the coal industry are lagging behind the recovery for other industries. This condition is expected to last well into the last half of 1983 and beyond.

Eventually, the recovery is expected to reach the coal industry. As factories resume operations, demand for electricity will increase and steel production will improve. Also, in time, the demand for American coal will improve as foreign countries recover from their particular economic problems.

Even a full recovery, however, will not return the coal industry to the prosperity it once enjoyed. Demand for electricity, the largest use for coal, is down and will remain relatively low due to conservation. Exports are down because the costs of inland transportation makes American coal practically noncompetitive in the world marketplace. In fact, certain domestic coal markets are in danger of being lost to low-cost imports.

Economists predict that coal production will total only 780 million tons, the lowest level since 1979. This figure could fall to 765 million tons, depending on how quickly consumers deplete current stockpiles. Exports are expected to fall from 87 million tons to 60 million tons, a 31-percent decrease.

Over the long term, a number of problems could prevent coal from ever assuming its logical role as the fuel of choice for industry and utilities. The President is said to be considering a repeal of Executive Order 12217, which was meant to encourage conversions to coal. In some instances, coal-fired facilities may be required to add expensive air quality control equipment. This would prevent many facilities from ever converting to coal from other fuel sources such as imported oil and natural gas. Another factor clouding the future of coal use is the faltering synthetic fuels industry. Due to the current low world price for oil and our domestic surplus of natural gas, synthetic fuels projects are finding that potential markets are closed to them.

My bill seeks to solve these problems and strengthen the coal industry so that our Nation's energy goals can be realized. It is imperative, both in the terms of national security and improving the domestic economy, that coal production and consumption increase substantially.

The legislation makes a number of adjustments to the tax laws. These changes should encourage a number of private sector initiatives which will result in a more competitive coal industry.

First, the 10-percent tax credit for fuel-fired facilities that convert to coal is extended for 10 years. This credit has been instrumental in making conversions to coal possible. While coal is usually a cheaper fuel to burn, there are large capital outlays associated with converting from a different fuel source. The tax credit lessens this burden.

In conjunction with the tax credit, my bill provides for a 1-year amortization for pollution control equipment. The current law, enacted in 1981, permits a 5-year amortization. The 1-year period better reflects the needs of those who burn coal and would promote protection of the environment.

A significant cost of converting to coal is the cost of installing pollution control equipment. Usually a combination of coal-washing houses and smokestack scrubbers are required to meet air quality standards. These are expensive modifications. Allowing companies to amortize these costs over 1 year will lessen this significant burden.

If the Clean Air Act were modified on the acid rain issue, this 1-year amortization or writeoff would become even more important. It has been estimated that to reduce sulfur emissions by 50 percent, a $10 billion investment in pollution control equipment would have to be made. This tax credit will ease these impediments to burning coal.

In conjunction with the previously discussed tax incentives, the third part of my bill gives favorable treatment for purchases of new coal mining equipment. Although current production lags behind the potential capacity, the industry needs to maintain state-of-the-art machinery. Eventually, demand for coal will increase and producers will have to be able to meet this increase. Also, in order to remain competitive in the world market, the mine operator will have to be able to produce coal at a cost that is comparable or better than the cost in any other country.

My bill insures that American coal production will remain efficient by increasing the investment tax credit for the purchase of mining equipment from 10 percent to the new level of 15 percent. While not an overly profound increase, it is enough to make the purchase of advanced technology equipment an economic reality.

Many coal producers have been forced to file for bankruptcy or other-

wise leave the business. Easing the tax burden will permit those companies strong enough to survive the recession to replenish their mining equipment.

The fourth part of my bill provides tax incentives to private industry for the research and development of coal-related technologies. Federal money for research and development has been reduced across the board. The private sector is ill-equipped to increase its share of research: It is expensive and time-consuming. Clearly there is a need for continued research in the coal industry.

Certain limited tax credits for research were passed into law 2 years ago, but these provisions are not sufficient to address the needs of the coal industry. This bill increases the credit for research into coal-related technology to 50 percent. Without this change, many research projects will be discontinued before the intended benefits are realized.

A number of important technologies are currently being developed. These include fluidized bed combustion, magnethydrodynamic technology and new methods for converting coal to combustible liquid form. All of this work is important and should be encouraged.

The work being done on nonpolluting methods for burning coal is especially important. Development of this technology could lead to huge savings for boilers using coal because less expensive equipment will be necessary at the smokestack. The clean burning of coal is a new frontier with great promise. Simple adjustments to the Tax Code would provide adequate incentives for research and development by the private sector.

Another part of my bill requires that the executive branch, under the direction of the Secretary of Energy, use its best efforts to convert major Federal fuel-fired facilities to coal. Work in this direction has already begun under Executive Order 12217. These efforts need to be continued and more Federal facilities converted to coal.

Next, the bill I introduce today will prevent the scheduled 15-percent reduction in the percentage depletion. Current law provides for a percentage depletion allowance for coal and iron ore. This allowance is scheduled to be reduced by 15 percent. In my opinion, this reduction will unfairly victimize two industries already suffering disproportionately from the recession.

Statistics gathered by my office show that the coal industry is presently enduring a 31.6-percent rate of unemployment, with 75,000 coal workers jobless. The coal industry is currently operating at only 66 percent of its capacity, compared with 80 percent capacity in 1982. Metallurgical coal, which is essential to steel production, has dropped to roughly 40 percent capacity utilization. The coal industry has not improved. Rather it has deteriorated further, and clearly does not merit any reduction in its percentage depletion allowance.

With respect to the iron ore industry, we are talking about an industry with over two-thirds of its entire work force laid off, with an estimated 11,300 hourly rated iron ore workers unemployed. The 15-percent reduction in the percentage depletion allowance may stifle what little resurgence the industry has experienced, and it would certainly not aid in the rehiring of laid-off workers. I cannot think of a worse time to implement this reduction in percentage depletion.

The next part of my bill addresses the tax treatment of reclamation expenses incurred by mine operators. The change I propose is to allow surface mine operators to deduct the cost of land reclamation at the time the money is set aside for future use, rather than at the time the reclamation actually occurs.

Federal law requires that surface mine operators set aside the estimated costs of reclaiming the land over the productive years of the mine. This law insures that when production stops, sufficient money will be available to restore the land to its original condition. Mining concerns would very much like to deduct the money the law requires to be set aside under existing tax law for accrued expenses. In the 1950's, the Third and Fourth Circuits Courts of Appeals concluded that such deductions were valid in certain circumstances. The Internal Revenue Service has refused to follow these decisions and insists that deductions for reclamation expenses not be deducted until the actual reclamation begins.

More recently, in December 1982, the Tax Court, in Ohio River Collieries against Commissioner, held that if the expenses are required by State or Federal law, and if the amount of expenses can be reasonably estimated, then the deduction is permitted. The IRS did not appeal this ruling, nor did it agree to abide by it in future cases. As a result, unnecessary litigation will continue over the tax treatment of these funds. This bill attempts to clarify existing law.

Mr. President, taken together, these changes will help the coal industry get back on its feet. All of my proposals encourage increased use of coal without harming other segments of America's economy. The only losers in my equation are the foreign oil exporting countries. The proposals espoused in my bill will reduce our Nation's dependence on imported oil and bring us much closer to realizing our goal of an energy self-sufficient United States.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1732

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. INCREASE IN ENERGY INVESTMENT TAX CREDIT FOR COAL MINING EQUIPMENT AND CONVERSIONS TO COAL.

(a) IN GENERAL.—Clause (i) of section 46(a)(2)(C) of the Internal Revenue Code of 1954 (relating to energy percentage) is amended by adding at the end thereof the following new subclauses:

"VII.	Conversions to coal fuel.—Property described in section 48(1)(3)(A)(iv).	10 percent...	Jan. 1, 1984.	Dec. 31, 1993.
"IX.	Coal mining equipment.—Property described in section 48(1)(3)(A)(X).	5 percent.....	Jan. 1, 1984.	Dec. 31, 1993.".

(b) DEFINITIONS.—

(1) CONVERSION TO COAL FUEL.—Clause (iv) of section 48(1)(3)(A) of such Code (relating to alternative energy property) is amended to read as follows:

"(iv) equipment designed to modify existing equipment which uses oil or natural gas as a fuel or as feedstock so that such equipment will use coal as fuel or feedstock.".

(2) COAL MINING EQUIPMENT.—Subparagraph (A) of section 48(1)(3) of such Code is amended—

(A) by striking out "and" at the end of clause (viii),

(B) by striking out the period at the end of clause (ix) and inserting in lieu thereof ", and", and

(C) by adding at the end thereof the following new clause:

"(x) equipment used for mining coal.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to periods beginning after December 31, 1983, under rules similar to the rules under section 48(m) of such Code.

SEC. 2. AMORTIZATION FOR POLLUTION CONTROL EQUIPMENT.

(a) IN GENERAL.—Section 169 of the Internal Revenue Code of 1954 (relating to amortization of pollution control facilities) is amended by redesignating subsection (j) as subsection (k) and inserting after subsection (i) the following new subsection:

"(j) FACILITIES USED IN CONNECTION WITH PLANTS FUELED BY COAL.—In the case of a certified pollution control facility used in connection with a plant that uses coal as a principal fuel, if the taxpayer elects the application of this subsection (at such time and in such manner as the Secretary may prescribe)—

"(1) subsection (a) shall be applied—

"(A) by substituting '12-month period' for '60-month period', and

"(B) by substituting '12 months' for 60 months',

"(2) subsection (b) shall be applied by substituting '12-month period' for '60-month period', and

"(3) subsection (f)(2) shall not apply.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1983.

SEC. 3. TAX INCENTIVES FOR COAL RESEARCH AND DEVELOPMENT.

(a) IN GENERAL.—Amend section 44F(A) of title 26, the Internal Revenue Code of 1954, to read:

"(a) GENERAL RULES.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to—

"(1) 50 percent of the excess (if any) of the qualified research expenses for the taxable year, over the base period research expenses for activities relating to coal mining or burning and to controlling pollutants caused by the burning of coal; and

"(2) 25 percent of the excess (if any) of the qualified research expenses for the taxable year, over the base period research expenses for all other activities."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply beginning after December 31, 1984.

SEC. 4. FEDERAL CONVERSION REQUIREMENTS.

(a) IN GENERAL.—Amend the Powerplant and Industrial Fuel Use Act of 1978, P.L. 95-620, Title VII, Subtitle A or add a new section 703.

"SEC. 703. FEDERAL CONVERSION REQUIREMENTS.

"(a) SURVEY.—Each Executive agency shall survey its electric powerplants and major fuel-burning installations in order to identify those that could result in substantial savings if converted to coal. The results of the survey shall be reexamined and updated every five years. The results of the surveys shall be transmitted to the Secretary of Energy (The Secretary). The Secretary shall establish guidelines for accomplishing the survey.

"(b) ANNUAL PLANS.—Each Executive agency shall submit to the Director of the Office of Management and Budget, through the Secretary, an annual plan, including cost estimates, for the conversion of electric powerplants and major fuel-burning installations to coal. The Secretary shall establish guidelines for developing such plans.

"(c) OTHER REGULATIONS.—The plan shall be submitted in accordance with any other instructions that the Director of the Office of Management and Budget may issue.

"(d) PRESIDENTIAL REPORTS.—The Secretary shall prepare for the President's consideration and transmittal to the Congress the report required by section 403(c) of the Act."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply beginning after December 31, 1984.

SEC. 5. COAL AND IRON ORE DEPLETION ALLOWANCE.

(a) IN GENERAL.—Subsection (a) of Section 291 of the Internal Revenue Code of 1954 (relating to 15 percent reduction in certain preference items) is amended by striking out paragraph (2) and redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.

(b)(1) Paragraph (1) of section 291(c) (relating to special rules involving pollution control facilities) is amended by striking out "subsection (a)(5)" and inserting in lieu thereof "subsection (a)(4)".

(2) Paragraph (1) of section 57(b) (relating to application with section 291) is amended to read as follows:

"(1) IN GENERAL.—In the case of any item of tax preference of an applicable corporation described in paragraph (4) or (7) of subsection (a), only 71.6 percent of the amount of such item of tax preference (determined without regard to this subsection) shall be taken into account as an item of tax preference."

(c) The amendments made by this section shall take effect as if included in the amendments made by section 204 of the Tax Equity and Fiscal Responsibility Act of 1982.

SEC. 6. TAX TREATMENT OF MINING RECLAMATION RESERVES.

(a) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 (relating to the taxable year for which deduction may be taken) of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new section:

"SEC. 467. RESERVES FOR ESTIMATED EXPENSES OF SURFACE MINING LAND RECLAMATION.

"(a) ALLOWANCE OF DEDUCTION.—In computing taxable income for the taxable year, there shall be taken into account a reasonable addition to any reserve established for the estimated expenses of surface mining land reclamation.

"(b) ADJUSTMENTS WHERE RESERVE BECOMES EXCESSIVE.—If it is determined that the amount of any reserve for the estimated expenses of surface mining land reclamation is (as of the close of the taxable year) excessive, then (under regulations prescribed by the Secretary) such excess shall be taken into account in computing taxable income for the taxable year.

"(c) ELECTION OF BENEFITS.—

"(1) IN GENERAL.—This section shall apply to the estimated expenses of surface mining land reclamation with respect to any property if and only if the taxpayer makes an election under this section with respect to such property. Such election shall be made in such manner as the Secretary may by regulations prescribe.

"(2) SCOPE OF ELECTION.—If an election under this section is made with respect to any property, such election shall—

"(A) apply to all estimated expenses of surface mining land reclamation of the taxpayer with respect to such property, and

"(B) specify whether such estimated expenses are allocable to either—

"(i) minerals extracted by surface mining activities, or

"(ii) the portion of the property disturbed by surface mining.

"(3) WHEN ELECTION MAY BE MADE.—

"(A) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, make an election under this section with respect to any property for his first taxable year—

"(i) which ends after the date of the enactment of the Mining Reclamation Reserve Act of 1983; and

"(ii) for which there are estimated expenses of surface mining land reclamation with respect to such property.

Such an election shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

"(B) WITH CONSENT.—A taxpayer may, with the consent of the Secretary, make an election under this section at any time.

"(4) REVOCABLE ONLY WITH CONSENT.—An election under this section, once made, may be revoked only with the consent of the Secretary.

"(5) PROPERTY DEFINED.—For purposes of this section, the term 'property' has the meaning given to such term by section 614.

"(d) ESTIMATED EXPENSES OF SURFACE MINING LAND RECLAMATION.—For purposes of this section—

"(1) IN GENERAL.—The term 'estimated expenses of surface mining land reclamation' means a deduction allowable to the taxpayer under this subtitle which—

"(A) is attributable to qualified reclamation activities to be conducted in subsequent taxable years,

"(B) can be estimated with reasonable accuracy, and

"(C) is allocable to either—

"(i) minerals extracted by surface mining activities which occur before the close of the taxable year, or

"(ii) the portion of the property disturbed by surface mining which occurs before the close of the taxable year.

"(2) QUALIFIED RECLAMATION ACTIVITIES.—The term 'qualified reclamation activities' means any land reclamation activities which are conducted in accordance with a reclamation plan—

"(A) which is submitted pursuant to the provisions of section 508 or 511 of the Surface Mining Control and Reclamation Act of 1977 (as in effect on January 1, 1983) and which is part of a surface mining and reclamation permit granted under the provisions of title V of such Act (as so in effect), or

"(B) which is submitted pursuant to any other Federal or State law which imposes reclamation and permit requirements substantially similar to those imposed by title V of such Act (as so in effect).

"(3) EXCEPTION.—Except for purposes of subsection (e), the term 'estimated expenses of surface mining land reclamation' does not include any amount allocable to minerals extracted or property disturbed by surface mining activities occurring before the beginning of the first taxable year for which an election under this section is made.

"(e) SPECIAL RULE FOR COSTS ATTRIBUTABLE TO PERIOD BEFORE ELECTION.—Any estimated expenses of surface mining land reclamation which are allocable to minerals extracted or property disturbed by surface mining activities which occurred before the first taxable year for which an election with respect to the property under this section is made and which have not previously been taken into account by the taxpayer in computing taxable income, shall be treated as deferred expenses and shall be allowed as a deduction ratably over a period—

"(1) which begins with the first month of the first taxable year for which an election under this section is made with respect to the property, and

"(2) which ends with the month during which it is reasonably expected that surface mining land reclamation activities with respect to the property involved will be completed (or if earlier the last month of the 60-month period beginning with the month described in paragraph (1)).

"(f) SPECIAL RULES.—

"(1) TAXPAYERS WHO MAKE AN ELECTION UNDER SECTION.—In the case of any taxpayer who makes an election under this section with respect to any property, the determination of the taxable year for which nonqualified land reclamation expenses with respect to such property are allowable as a deduction shall be made under regulations prescribed by the Secretary. For purposes of the preceding sentence, the term 'nonqualified land reclamation expenses' means any expense of land reclamation activities (other than qualified reclamation activities) which are attributable to surface mining.

"(2) TAXPAYERS WHO DO NOT MAKE AN ELECTION.—In the case of any taxpayer who does not make an election under this section with respect to any property, any deduction for expenses of land reclamation activities with respect to such property attributable to surface mining shall be allowable in the same manner and to the same extent as if this section had not been enacted.".

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 467. Reserves for estimated expenses of surface mining land reclamation.".

(c) EFFECTIVE DATE; SPECIAL RULE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years ending after the date of enactment of this section.

(2) SPECIAL RULE.—If—

(A) the taxpayer makes an election under section 467 of the Internal Revenue Code of 1954 for his first taxable year ending after the date of the enactment of this section, and

(B) for a continuous period of one or more taxable years each of which ends on or before such date of enactment, the taxpayer used an accrual method of accounting for a property with respect to the expenses of surface mining land reclamation activities attributable to surface mining which allowed a deduction for such expenses prior to the taxable year in which such expenses were paid,

then the taxpayer may make an election under this paragraph to have the method of accounting which he used for such continuous period with respect to such property treated as a valid method of accounting for purposes of the Internal Revenue Code of 1954. The taxpayer may make an election under this paragraph with respect to only one such continuous period at such time and in such manner as the Secretary of the Treasury shall by regulations prescribe.

By Mr. TRIBLE:

S. 1733. A bill to amend title 18, United States Code, to make a crime the use, for fraudulent or other illegal purposes, of any computer owned or operated by the United States, certain financial institutions, and entities affecting interstate commerce; to the Committee on the Judiciary.

FEDERAL COMPUTER SYSTEMS PROTECTION ACT OF 1983

Mr. TRIBLE. Mr. President, the computer age has brought with it a new set of criminal practices. Tampering with stored data, introducing fraudulent records and altering, destroying, or stealing assets, or data can now be accomplished with the touch of a button. Computers now link and store data of immeasurable worth, vital to the security and the economy of our Nation. Yet, under existing Federal criminal statutes, it is difficult to prosecute such crimes even when they have been detected and their perpetrators have been identified.

In order to correct this problem, I am introducing the Federal Computer Systems Protection Act of 1983. This is a companion measure to Representative BILL NELSON'S bill which has 87 cosponsors in the House. The bill would make it a violation of Federal law to use or attempt to use a computer with the intent to defraud, fraudulently obtain property, embezzle, steal, or convert the property of another to one's own or another's use.

In addition, this legislation makes it a criminal offense intentionally to damage a computer or to deny an owner access to his computer or the information stored within it. This latter provision of activity ranging from employees who can maliciously change their employer's passwords, to terrorists who might interrupt the flow of data between the computers of the National Security Agency.

The principal difficulty of prosecuting computer crime under existing law is that computers involve certain intangibles which have escaped legal definition. My bill solves this problem by defining property so as to include such phenomena as information in the form of computer processed, produced, or stored data; information configured for use in a computer; information in a computer medium; information being processed, transmitted or stored; computer operating or applications programs; or services. It defines services so as to include computer data processing and storage functions.

The bill does not cover hand-held calculators, home computers, or automatic typewriters or typesetters that are used only for private purposes. Computer crime becomes a serious Federal concern only when it affects the Federal Government or interstate commerce. My bill includes, therefore, the three categories of computers that are a vital, indisputable national concern.

First, it covers Federal computers. The Federal Government now has over 15,000 computers, most of which are in the Bureau of the Census and the Department of Defense. The integrity of these systems is absolutely vital to our national security—yet thousands and thousands of people have access to them, and the best system of security clearance in the world cannot guarantee that there will be no one among those thousands who is self-serving, malicious, or actually hostile to U.S. interests. These critical machines require special Federal protection.

Second, the Computer Systems Protection Act covers the computers of federally guaranteed financial institutions. Our national and international economy absolutely hinges upon the reliable, undisrupted activities of these institutions. And, of course, the potential for illegal gain is greatest. Finally, it covers networks operating in interstate commerce.

Professionals in both the computer and law enforcement industries emphatically agree on the need for tighter and more specific statutes. This bill has the endorsements of the Data Processing Management Association, the Computer and Business Equipment Manufacturers Association, the Computer and Communications Industry Association, the National Law Enforcement Council, and other computer and law enforcement associations.

The Nation's most vital business is now transacted by means of machines to which ingenious criminals can find illicit and unpredictable access. Crime has moved into the computer age, and it is time for the law to respond. I urge my colleagues to support this bill and ask unanimous consent that a copy of the bill be included in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Computer Systems Protection Act of 1983".

SEC. 2. The Congress finds that—

(1) computer-related crime is a growing problem in the Government and in the private sector;

(2) such crime occurs at great cost to the public since losses for each incident of computer crime tend to be far greater than the losses associated with each incident of other white collar crime;

(3) the opportunities for computer-related crimes in Federal programs, in financial institutions, and in computers which operate in or use a facility of interstate commerce through the introduction of fraudulent records into a computer system, unauthorized use of computer facilities, alteration or destruction of computerized information files, and stealing of financial instruments, data, or other assets, are great;

(4) computer-related crime directed at computers which operate in or use a facility of interstate commerce has a direct effect on interstate commerce; and

(5) the prosecution of persons engaged in computer-related crime is difficult under current Federal criminal statutes.

SEC. 3. (a) Chapter 47 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1028. Computer fraud and abuse

"(a) Whoever uses, or attempts to use, a computer with intent to execute a scheme or artifice to defraud, or to obtain property by false or fraudulent pretenses, representations, or promises, or to embezzle, steal, or knowingly convert to his use or the use of another, the property of another, shall, if the computer—

"(1) is owned by, under contract to, or operated for or on behalf of—

"(A) the United States Government; or

"(B) a financial institution,

and the prohibited conduct directly involves or affects the computer operation for or on behalf of the United States Government or a financial institution; or

"(2) operates in, or uses a facility of, interstate commerce,

be fined not more than two times the amount of the gain directly or indirectly derived from the offense or $50,000, whichever is higher, or imprisoned not more than five years, or both.

"(b) Whoever intentionally and without authorization damages a computer described in subsection (a) or intentionally and without authorization causes or attempts to cause the withholding or denial of the use of a computer, a computer program, or stored information shall be fined not more than $50,000 or imprisoned not more than five years or both.

"(c) DEFINITIONS.—For the purpose of this section the term—

"(1) 'computer' means an electronic, magnetic, optical, hydraulic, organic, or other high speed data processing device or system performing logical, arithmetic, or storage

functions, and includes any property, data storage facility, or communications facility directly related to or operating in conjunction with such device or system; but does not include an automated typewriter or typesetter, a portable hand-held calculator, or any computer designed and manufactured for, and which is used exclusively for, routine personal, family, or household purposes and which is not used to access, to communicate with, or to manipulate any other computer;

"(2) 'financial institution' means—

"(A) a bank with deposits insured by the Federal Deposit Insurance Corporation;

"(B) the Federal Reserve or a member of the Federal Reserve including any Federal Reserve bank;

"(C) an institution with accounts insured by the Federal Savings and Loan Corporation;

"(D) a credit union with accounts insured by the National Credit Union Administration;

"(E) a member of the Federal home loan bank system and any home loan bank;

"(F) a member or business insured by the Securities Investor Protection Corporation; and

"(G) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities and Exchange Act of 1934;

"(3) 'property' means anything of value, and includes tangible and intangible personal property; information in the form of computer processed, produced, or stored data; information configured for use in a computer; information in a computer medium; information being processed, transmitted, or stored; computer operating or applications programs; or services;

"(4) 'services' includes computer data processing and storage functions;

"(5) 'United States Government' includes a branch or agency thereof; and

"(6) 'use' includes to instruct, communicate with, store data in, or retrieve data from, or otherwise utilize the logical, arithmetic, or memory functions of a computer, or, with fraudulent or malicious intent, to cause another to put false information into a computer; and

"(7) 'computer medium' includes the means of effecting or conveying data for processing in a computer, or a substance or surrounding medium which is the means of transmission of a force or effect that represents data for processing in a computer, or a channel of communication of data for processing in a computer.

"(d)(1) In a case in which Federal jurisdiction over an offense as described in this section exists concurrently with State or local jurisdiction, the existence of Federal jurisdiction does not, in itself, require the exercise of Federal jurisdiction, nor does the initial exercise of Federal jurisdiction preclude its discontinuation.

"(2) In a case in which Federal jurisdiction over an offense as described in this section exists or may exist concurrently with State or local jurisdiction, Federal law enforcement officers, in determining whether to exercise jurisdiction, shall consider—

"(A) the relative gravity of the Federal offense and the State or local offense;

"(B) the relative interest in Federal investigation or prosecution;

"(C) the resources available to the Federal authorities and the State or local authorities;

"(D) the traditional role of the Federal authorities and the State or local authorities with respect to the offense;

"(E) the interests of federalism; and

"(F) any other relevant factor.

"(3) The Attorney General shall—

"(A) consult periodically with representatives of State and local governments concerning the exercise of jurisdiction in cases in which Federal jurisdiction as described in this section exists or may exist concurrently with State or local jurisdiction;

"(B) provide general direction to Federal law enforcement officers concerning the appropriate exercise of such Federal jurisdiction which, for the purposes of investigation, is vested concurrently in the Department of Justice and the Department of the Treasury;

"(C) report annually to Congress concerning the extent of the exercise of such Federal jurisdiction during the preceding fiscal year; and

"(D) report to Congress, within one year of the effective date of this Act, on the long-term impact of this Act upon Federal jurisdiction and the increasingly pervasive and widespread use of computers in the United States (the Attorney General shall periodically review and update such report).

"(4) Except as otherwise prohibited by law, information or material obtained pursuant to the exercise of Federal jurisdiction may be made available to State or local law enforcement officers having concurrent jurisdiction, and to State or local authorities otherwise assigned responsibility with regard to the conduct constituting the offense.

"(5) An issue relating to the propriety of the exercise of or of the failure to exercise Federal jurisdiction over an offense as described in this section, or otherwise relating to the compliance, or to the failure to comply, with this section, may not be litigated, and a court may not entertain or resolve such an issue except as may be necessary in the course of granting leave to file a dismissal of an indictment, an information, or a complaint.".

Sec. 4. The table of sections of chapter 47 of title 18, United States Code, is amended by adding at the end thereof the following: "1028. Computer fraud and abuse.".

By Mr. ZORINSKY (for himself, Mr. PRYOR, Mr. PRESSLER, Mr. JOHNSTON, and Mr. ABDNOR):

S. 1734. A bill to amend title 17 of the United States Code with respect to public performances of nondramatic musical works by means of coin-operated phonorecord players, and for other purposes; to the Committee on the Judiciary.

COIN-OPERATED PHONORECORD PLAYER COPYRIGHT ACT OF 1983

● Mr. ZORINSKY. Mr. President, today I, along with Senators PRYOR, PRESSLER, JOHNSTON, and ABDNOR, am introducing the Coin-Operated Phonorecord Player Act of 1983 to correct abuses of the Copyright Royalty Tribunal, to protect an important segment of the Nation's small businessmen—jukebox operators, to help insure that copyright owners will continue to receive royalties for their recordings played on jukeboxes, and to maintain jukeboxes as an inexpensive form of entertainment for the American people.

In 1976, the revised Copyright Act mandated that jukebox operators pay a royalty fee of $8 per year for each jukebox that they operated. Congress, in its wisdom, created a new Federal agency, the Copyright Royalty Tribunal, to review rates periodically and to distribute royalties to the creating artists. The Tribunal responded in 1980 by raising the jukebox royalty fee by over 525 percent—$25 through 1983; $50 from 1984-86; and $50 plus an inflation adjustment from 1987-90. This increase has resulted and will result in fewer jukeboxes being placed in establishments each year. According to the Copyright Royalty Office, registrations have dropped by over 20,000 machines since royalty fees were first imposed.

Many jukebox operators have gone out of business during the past decade; the increased royalty fees will speed up their departure from the industry. Operators who have not registered their jukeboxes, often due to ignorance of the law, are leaving the business once they become aware of the law's requirements. This awareness has come all too often in the form of a demand from a performing rights society to pay damages of several thousand dollars for what was no more than a $25 violation.

To stabilize the industry and to correct these abuses, I offer this legislation which establishes a one-time only licensing fee of $50, the highest rate currently authorized by the CRT—absent the inflation adjustment—through the end of the decade. Jukeboxes would be registered and the fee paid by their manufacturers or importers and thereafter any operator could use them without liability. Operators would register on a one-time basis the jukeboxes that they already own and pay a royalty fee of up to $25. Since the useful life of a jukebox is approximately 5 years, within a very short period of time all jukeboxes would be registered and the highest royalty fee would be paid to the copyright owner.

This approach is easy to administer and easy to enforce. It takes away the fee-setting authority of the Copyright Royalty Tribunal, thus reducing its workload with the goal of eliminating the agency entirely. Finally, it offers hope to a beleaguered industry of small businessmen while protecting the rights of copyright owners. It deserves your serious consideration and support.

Mr. President, I ask unanimous consent that the text of the legislation be printed in full, immediately following this statement.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1734

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this

Act may be cited as the "Coin-Operated Phonorecord Player Copyright Act of 1983".

SEC. 2. That Congress hereby finds and declares that—

(1) to promote the progress of science and useful arts, the Constitution of the United States empowers the Congress to give authors and inventors the exclusive right to their respective writings and discoveries for a limited time;

(2) the coin-operated phonorecord player industry contributes to the cultural and economic well being of the public;

(3) copyright owners should receive fair compensation for their creative endeavors and for the use of their property;

(4) coin-operated phonorecord player operators are a primary source for purchasing and promoting copyrighted nondramatic musical works;

(5) performance of nondramatic musical works by means of a coin-operated phonorecord player infringes on the exclusive rights granted to copyright owners under section 106(4) of title 17, United States Code;

(6) the more than 525 percent increase in the royalty fee for coin-operated phonorecord players approved by the Copyright Royalty Tribunal will cause major disruptions in the coin-operated phonorecord player industry;

(7) the current compulsory license system for coin-operated phonorecord players is difficult to administer, to comply with, and to enforce;

(8) the continued economic disruption to the coin-operated phonorecord player industry should be minimized; and

(9) the public and the coin-operated phonorecord player operator should continue to have access to copyrighted nondramatic musical works through a compulsory license established: (A) for importers and manufacturers of coin-operated phonorecord players based upon payment of an annual license fee of fifty dollars per phonorecord player manufactured or imported and distributed during the calendar year; and (B) for operators of coin-operated phonorecord players owned by the operator on the effective date of this Act for use thereafter based upon payment of a one-time license fee of twenty-five dollars per phonorecord player.

SEC. 3. Chapter 1 of title 17 of the United States Code is amended by amending section 116 to read as follows:

"SCOPE OF EXCLUSIVE RIGHTS IN NONDRAMATIC MUSICAL WORKS: PUBLIC PERFORMANCES BY MEANS OF COIN-OPERATED PHONORECORD PLAYERS

"SEC. 116. (a) LIMITATION ON EXCLUSIVE RIGHT.—In the case of a nondramatic musical work embodied in a phonorecord, the exclusive right under clause (4) of section 106 to perform the work publicly by means of a coin-operated phonorecord player is limited as follows:

"(1) The proprietor of the establishment in which the public performance takes place is not liable for infringement with respect to such public performance unless such proprietor is the manufacturer, importer, or operator of the phonorecord player and fails to secure the compulsory license established under this section.

"(2) The manufacturer or importer of the coin-operated phonorecord player manufactured and distributed in the United States, or imported into and distributed in the United States on or after the effective date of this section shall obtain a compulsory license to perform the work publicly on that phonorecord player by filing the application, depositing the statement of account and paying the royalty fee provided for in this section.

"(3) The operator of the phonorecord player shall obtain a compulsory license to perform the work publicly on any phonorecord player owned by the operator prior to the effective date of this section for use thereafter by filing the application, depositing the statement of account and paying the royalty fee provided for in this section.

"(b) COMPULSORY LICENSE FOR COIN-OPERATED PHONORECORD PLAYERS—MANUFACTURERS AND IMPORTERS.—

"(1) Notwithstanding the provisions of section 106 (4), the importation into and distribution in the United States, and the manufacture and distribution in the United States on or after the effective date of this section of any coin-operated phonorecord player shall be the subject of compulsory licensing if the importer or manufacturer of the player files the application, deposits the statement of account and pays the royalty fee specified in this section.

"(2) The importer or manufacturer shall, at least one month before the distribution in the United States of any coin-operated phonorecord player or within sixty days after the effective date of this section, whichever is later, file with the Register of Copyrights (hereinafter referred to as the 'Register') an application, including a statement of its identity and address and a description of any trade or business names, trademarks, or like indicia that it uses in connection with the importation, manufacture or distribution of coin-operated phonorecord players in the United States, and thereafter, from time to time, such further information as the Register may prescribe by regulation to carry out the purposes of this section.

"(3) The importer or manufacturer shall deposit with the Register in accordance with requirements prescribed by the Register by regulations, a statement of account specifying the number of coin-operated phonorecord players imported into, or manufactured and distributed in the United States during the prior calendar quarter, together with such other information, and in such form, content, and manner as the Register prescribes by regulation. In the case of all statements of account deposited by the manufacturer or importer, the statement shall be accompanied by a total royalty fee for the period covered by the statement in accordance with subsection (d)(1) of this section.

"(c) COMPULSORY LICENSE FOR COIN-OPERATED PHONORECORD PLAYERS—OPERATORS.—

"(1) Notwithstanding the provisions of section 106 (4), the performance of a work on a coin-operated phonorecord player owned by an operator prior to the effective date of this section for use thereafter shall be subject to compulsory licensing. The operator of the phonorecord player shall file the application, deposit the statement of account and pay the royalty fee specified in this section.

"(2) The operator shall within sixty days after the effective date of this section—

"(A) file with the Copyright Office, in accordance with regulations prescribed by the Register, an application containing—

"(i) the name and address of the operator of the phonorecord player, and

"(ii) the manufacturer and serial number or other explicit identification of the phonorecord player.

"(B) deposit a statement of account specifying the number of coin-operated phonorecord players owned by the operator prior to the effective date of this section for use thereafter, and

"(C) pay the royalty fee for each such player in accordance with subsection (d)(2) of this section.

"(3) Any operator who complies with the provisions of this subsection shall be assessed pursuant to paragraph (4) only and shall not, by reason of such compliance, be subject to liability under chapter 5 of this title or under any other law for failing to obtain a compulsory license for any year or lesser period of time prior to the effective date of this section.

"(4) The royalty fee required under this section shall be assessed on a one-time basis on each phonorecord player owned by the operator on the effective date of this section for use thereafter. The operator shall not be required to file an application, deposit a statement of account, or pay a royalty fee for any phonorecord player purchased after the effective date of this section.

"(5) The operator may elect to pay the royalty fee specified in this section on a quarterly basis for a period not to exceed two years, pursuant to regulations promulgated by the Register.

"(d) COMPUTATION OF ROYALTY FEES.—

"(1) The royalty fee payable by the manufacturer or importer under section (b) shall be fifty dollars per phonorecord player.

"(2) The royalty fee payable by the operator under subsection (c) shall be based upon the number of years of useful life remaining to the phonorecord player under regulations promulgated by the Register, provided that the fee shall not exceed twenty-five dollars per phonorecord player.

"(e) LIST OF PHONORECORD PLAYERS REGISTERED.—The Register shall keep a current list of all phonorecord players that have been registered by the manufacturer, importer and operator. Such list shall be available to the public.

"(f) DISTRIBUTION OF ROYALTIES.—

"(1) The Register shall receive all royalty fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest, by the Copyright Royalty Tribunal, as provided by this title. The Register shall submit to the Copyright Royalty Tribunal, on an annual basis, a detailed statement of account covering all royalty fees received for the relevant period.

"(2) During the month of January in each year, every person claiming to be entitled to compulsory license fees under this section for performances during the preceding twelve-month period shall file a claim with the Copyright Royalty Tribunal, in accordance with the regulations prescribed by the Tribunal. Such claim shall include an agreement to accept as final, except as provided in section 810 of this title, the determination of the Copyright Royalty Tribunal in any controversy concerning the distribution of royalty fees deposited under subsection (f)(1) of this section to which the claimant is a party. Notwithstanding any provisions of the antitrust laws, for purposes of this subsection any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may

designate a common agent to receive payment on their behalf.

"(3) After the first day of October of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees deposited under subsection (f)(1). If the Tribunal determines that no such controversy exists, it shall, after deducting its reasonable administrative costs under this section, distribute such fees to the copyright owners entitled, or to their designated agents. If the Tribunal finds that such a controversy exists, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

"(4) The fees to be distributed shall be divided as follows:

"(A) to every copyright owner not affiliated with a performing rights society, the pro rata share of the fees to be distributed to which such copyright owner proves entitlement; and

"(B) to the performing rights societies, the remainder of the fees to be distributed in such pro rata shares as they shall by agreement stipulate among themselves, or, if they fail to agree, the pro rata share to which such performing rights societies prove entitlement.

"(5) During the pendency of any proceeding under this section, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

"(6) The Tribunal shall distribute the royalties collected under this section in a manner designed to ensure that the artist who created the copyrighted work shall receive fair reimbursement for his efforts.

"(g) REGULATIONS BY REGISTER.—The Register of Copyrights shall promulgate rules and regulations necessary to carry out the provisions of this section.

"(h) CRIMINAL PENALTIES.—Any person who knowingly makes a false representation of a material fact in an application or deposit of account filed under this section shall be fined not more than $2,500.

"(i) DEFINITIONS.—As used in this section:

"(1) A 'coin-operated phonorecord player' means a machine or device that—

"(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by insertion of coins, currency, tokens, or other monetary units or their equivalent;

"(B) is accompanied by a list of the titles of all the musical works available for performance on it, which list is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public, and

"(C) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

"(2) An 'importer' means any person who brings or causes to be brought a coin-operated phonorecord player into the United States from outside the country.

"(3) An 'operator' means any person who, alone or jointly—

"(A) owns a coin-operated phonorecord player;

"(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

"(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.

"(4) A 'manufacturer' means any person who produces or causes to be produced a coin-operated phonorecord player.

"(5) A 'performing rights society' means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners.

"(6) 'Antitrust laws' means the Federal Trade Commission of the Clayton Act.".

SEC. 4. (a) Section 801 of title 17, United States Code, is amended in subsection (b)(1) by striking out "sections 115 and 116" each place it appears and inserting in lieu thereof "section 115".

(b) Section 804 (a) of title 17, United States Code, is amended—

(1) by striking out "sections 115 and 116" and inserting in lieu thereof "section 115"; and

(2) by striking out paragraph (2)(c).●

By Mr. GORTON (for himself and Mr. JACKSON):

S. 1735. A bill entitled the Shoalwater Bay Indian Tribe-Dexter by the Sea Claim Settlement Act; to the Select Committee on Indian Affairs.

SHOALWATER BAY INDIAN TRIBE-DEXTER BY THE SEA CLAIM SETTLEMENT ACT

Mr. GORTON. Mr. President, the legislation I am introducing today, on behalf of myself and Senator JACKSON, the Shoalwater Bay Indian Tribe-Dexter by the Sea Claim Settlement Act, provides a legislative solution to a conflict that has arisen between the Shoalwater Bay Indian Tribe and owners of private property within the Shoalwater Bay Indian Reservation.

On September 22, 1866, President Andrew Johnson, established by Executive order the Shoalwater Bay Indian Reservation wherein specific lands in the Washington Territory were reserved from sale and set apart for Indian purposes.

On August 1, 1872, the General Land Office of the United States issued a patent for lands in the Washington Territory to one George N. Brown and included in that patent lands that are claimed to have been included in the previously established reservation. It is from that patent that the conflict between the Shoalwater Bay Indian Tribe and the successors in title to Mr. Brown arises, a conflict that has resulted in a civil class action suit for ejectment, damages, and to quiet title being filed in the U.S. District Court for the Western District of Washington at Tacoma by the Shoalwater Bay Indian Tribe against those successors in title to Mr. Brown.

This legislation is substantially the same as that forwarded to the Congress on December 6, 1982, by the Assistant Secretary of the Interior for Indian Affairs, Mr. Kenneth L. Smith wherein he stated that:

In a letter received by this Department on June 9, 1981, the Assistant Attorney General for Land Natural Resources recommended that the Shoalwater Bay boundary claim be considered for legislative resolution pursuant to section 2 of P.L. 96-217. The Assistant Attorney General believes the claim is inappropriate for litigation because officials of the United States Government were primarily responsible for the land being excluded from the reservation.

The bill I am introducing today would extinguish the tribe's claim and remove the cloud over approximately 60 parcels of private property held by owners whose title derives from a patent issued by the U.S. Government 113 years ago.

The authorized payment in this bill is $120,000—the figure used in the administration's previous proposal. I am aware that varying estimates exist for the proper valuation of this property. This figure will be one of the items for further discussion, as we consider this bill. The Select Committee on Indian Affairs will be holding a hearing on this bill in Washington State during the August recess at which we will seek the comments and views of all the interested and affected parties.

Mr. President, I ask unanimous consent that the text of this bill be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1735

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the Shoalwater Bay Indian Tribe-Dexter by the Sea Claim Settlement Act.

CONGRESSIONAL FINDINGS

SEC. 2. The Congress finds that—

(a) there is pending before the United States District Court for the Western District of Washington at Tacoma a civil action No. C83-167T entitled "THE SHOALWATER BAY INDIAN TRIBE, a federally recognized Indian tribe v. JOE AMADOR and JEAN AMADOR, et al.," which involves claims to certain privately held lands within the Shoalwater Bay Indian Reservation in Tokeland, Washington such lands known as Dexter by the Sea.

(b) The owners of the private property referred to in section (2)(a) derive their title from a patent issued by the United States Government to George N. Brown on August 1, 1872, certificate number 3763.

(c) The Shoalwater Bay Indian Reservation was established by Executive Order of President Andrew Johnson on September 22, 1866 and is alleged to include the lands claimed by the Shoalwater Bay Indian Tribe in the civil action referred to in section (2)(a).

(d) In its patent to George N. Brown in 1872, the United States failed to exempt the lands claimed by the Shoalwater Bay Indian Tribe in the civil action referred to in section (2)(a) as part of the Shoalwater Bay Indian Reservation established in 1866.

(e) Since 1872 the land described in the civil action referred to in section (2)(a) has been the subject of disputes claiming dual chains of title in the United States as trustee for the Shoalwater Bay Indian Tribe and the patentee, George N. Brown and his successors in title, the defendants in the civil action referred to in section (2)(a).

(f) The pendency of the civil action referred to herein has placed a cloud on the

titles held by the residents of Dexter by the Sea rendering their property essentially unmarketable.

(g) A legislative resolution to the civil action referred to in Section (2)(a) is appropriate because the United States Government is responsible for the failure to except the land now known as Dexter by the Sea from the patent to George N. Brown in 1872.

SEC. 3. The Secretary of the Interior (hereinafter referred to as the "Secretary") is hereby authorized to pay an amount not to exceed $120,000 to the Shoalwater Bay Indian Tribe (hereinafter referred to as the "Tribe") in settlement of all claims by such Tribe against the United States, and against any and all other persons, organizations, associations for the patenting to others of lands purportedly included within the Shoalwater Bay Reservation established by the Executive Order of September 22, 1866, and the Tribe's claim to title to such lands, specifically to that portion of Government Lot 1 in Section 11, Township 14N, Range 11W, in the State of Washington, now known as Dexter by the Sea, is hereby extinguished and the validity of the patent issued by the United States on August 1, 1872 to George N. Brown, certificate Number 3763, is hereby specifically ratified.

SEC. 4. Any payment to the Tribe pursuant to this Act shall be conditioned upon adoption by the governing body of the Tribe of a resolution approved by the Secretary authorizing the execution by an officer or official of the Tribe of such documents as the Secretary may deem necessary and approve waiving any and all rights and claims as to all parties which the Tribe may have relating to said patenting of lands within the Reservation and subsequent use of such lands, and shall be further conditioned upon the filing with the Secretary of an order from the United States District Court dismissing with prejudice the complaint filed in the case of *The Shoalwater Bay Indian Tribe*, a federally recognized Indian tribe, plaintiff v. *Joe Amador and Jean Amador, et al. defendants*, No. C83-167T. now pending in the United States District Court, for the Western District of Washington at Tacoma.

SEC. 5. The payment authorized by this Act shall be made from funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

By Mr. DURENBERGER:

S. 1736. A bill to establish a process that provides for the submission to the Congress each year of a regulatory budget that recommends the costs to be incurred during the fiscal year beginning on October 1 of each year by specified economic sectors in complying with the laws of the United States and the rules promulgated thereunder, and for consideration by the Congress of a bill containing proposals for legislation to implement such regulatory budget; to the Committee on Governmental Affairs.

REGULATORY POLICY ACT OF 1983

● Mr. DURENBERGER. Mr. President, I rise today to introduce the Regulatory Policy Act of 1983. This bill is designed to establish a process for the systematic congressional oversight of regulatory compliance costs on selected sectors of the economy.

In the coming months, we can expect to hear a lot about the need for an American "industrial policy"—a policy usually described as a framework for public and private sector cooperation, with the primary purpose of boosting the competitive position of U.S. industry in world markets. The reasons for adopting such a policy are indeed persuasive: While we have succeeded in expanding the international trading system, our industries have found themselves increasingly vulnerable to foreign competition. The projected fiscal year 1983 trade deficit, which now stands at over $40 billion, translates into as many as a million "exported" jobs. Meanwhile, the National Association of Manufacturers reports that more than 70 percent of all domestically produced goods have foreign competitors.

Unfortunately, it has proven much easier to prescribe a workable industrial policy than to design one. The concept is often described in terms of providing Government subsidies to favored sectors of the economy in the form of low-interest loans, tax breaks, research and development grants, and even trade protection. Largely forgotten has been the need to better manage the substantial effects which accumulated regulatory compliance costs are having on the health of American industry. And this is precisely where we should start.

The Regulatory Policy Act is designed to promote industrial revitalization through rational and appropriate regulatory reform. It will help the Congress to assess the incidence and extent of Federal regulatory costs—now extimated to exceed $100 billion per year—and to insure that such policies do not claim so many of industry's resources in any one year that their overall effect is to do society more harm than good. The legislation accomplishes this objective by filling a major gap in our understanding of the economics of regulation.

Presently, regulatory analysis is undertaken one regulation at a time. And while, from this perspective, it may appear that all Federal regulations have more benefits than costs, the combined costs of several such regulations may sometimes be more than certain regulated entities can afford. The regulatory budget process contained in this bill will give Congress an overview of regulatory policy, and will create a policymaking process for the enactment of regulatory reforms designed to avoid unintended sectoral unemployment and regional distress.

Under this process, we will ask the President to develop estimates of the total compliance costs to be incurred by selected sectors of the economy as a result of Federal regulatory requirements for the ensuing fiscal year and two succeeding fiscal years. Based on his assessment of the economic effects of these compliance costs, and on the benefits of the individual regulations, the President will be required to identify those provisions of law or regulation that should be changed in order to bring a sector's compliance cost budget to an efficient and affordable level. This analysis, together with proposed legislation to implement the recommended changes, would be transmitted to Congress each year, within 30 days of the submission of the fiscal budget.

The President's regulatory budget legislation would be introduced by request and considered by the Committees on Government Operations and Governmental Affairs of the House and Senate, respectively. These committees would have to report a resolution on the regulatory budget by April 1, which would then be concurrently referred to other standing committees with jurisdiction over the regulatory statutes being amended. Such standing committees would be given 30 days in which to amend the legislation, after such time the legislation would be resubmitted to the Committees on Government Operations and Governmental Affairs, consolidated, and reported to the floor of the respective Houses. Congress would be required to vote on such legislation by July 31, and to complete all action by September 15.

Mr. President, we need such legislation if the important task of regulatory oversight is not to be abandoned in large part to the executive and judicial branches of Government. The Supreme Court's recent invalidation of the legislative veto takes from Congress an important tool for asserting authority over the regulatory process. Some have used this event to call for additional judicial involvement in rulemaking proceedings. However, the regulatory budget process offers a constitutional alternative for enhancing the role of the legislative branch in assuring that policy is consistent with broad national needs. While the implementation of regulatory policy can lead to uncontrollable costs, with unintended consequences, the regulatory budget process will reassert congressional control at a level of detail designed to assure the optimal use of regulation to balance important social goals.

Notably, the intent of the legislation is not to unduly reverse regulatory policies, nor to usurp the role of committees with jurisdiction over such statutes. Rather, the process is designed to bring about small, but necessary, adjustments in regulatory programs, such as the extension of unmeetable deadlines or the relaxation of inflexible standards. It is for this reason that committees having jurisdiction over regulatory statutes have carefully been accorded a central role in the regulatory budget process.

Mr. President, the Nation needs an industrial policy, and the Congress needs a new tool for the effective oversight of the regulatory process. I strongly believe that we have in the Regulatory Policy Act a workable and innovative method for accomplishing these objectives. Therefore, while I intend to work with all interested parties in the coming months to minimize the problematic aspects of this approach, I strongly urge that this legislation be given the very serious and timely consideration it is most certainly due.

Mr. President, I request that a copy of the bill be printed into the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows;

S. 1736

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Regulatory Policy Act of 1983".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds and declares that—

(1) In recent years Federal regulation has expanded greatly in scope;

(2) Federal regulation was chosen as the method of implementing over fifty of the social programs enacted between 1960 and 1980, in lieu of other methods of achieving the objectives of such programs such as tax expenditures, loan guarantees, licenses, fees and the expenditure of Federal funds;

(3) Federal regulatory goals are achieved primarily by imposing compliance costs on regulated entities such as individuals, firms, nonprofit organizations, and State and local governments;

(4) compliance costs are not reflected in Federal budget and revenue estimates;

(5) although the exact distribution of compliance costs throughout the national economy is not known, such costs have been widely estimated to exceed $100,000,000,000 each year and to have significant effects on economic growth, productivity, employment, and inflation, as well as on the balance of international trade of the United States;

(6) the unduly high compliance costs incurred by certain economic sectors have reduced the ability of such sectors to compete in the international marketplace and have contributed to structural unemployment in the economy; and

(7) inasmuch as some economic sectors incur greater compliance costs under Federal laws and rules than other such sectors, it is desirable to establish a regulatory budget process with sufficient flexibility to allow the Congress to modify the laws of the United States (and the compliance costs imposed thereby) only with respect to those economic sectors that will benefit from such modification and to exclude from such process economic sectors that will not benefit thereby.

(b) Therefore, it is the purpose of this Act to establish a process that—

(1) provides for—

(A) the submission to the Congress each year of a regulatory budget that—

(i) specifies those economic sectors for which the Congress should modify the compliance costs to be incurred during the fiscal year beginning on October 1 of such year, and each of the next two succeeding fiscal years, under Federal laws and rules,

(ii) recommends the compliance costs to be incurred by each such economic sector during each such fiscal year under each such law or rule, and

(iii) recommends changes in such laws that will modify the compliance costs to be incurred by each such sector during each such fiscal year to equal the amount recommended by such sector during such fiscal year under clause (ii), and

(B) consideration by the Congress each year of a bill containing proposals by the President for legislation to implement such changes;

(2) assures effective governmental control of the distribution and effects of compliance costs on the various economic sectors making up the national economy;

(3) involves the Congress and the President in the systematic evaluation of the costs and benefits of Federal laws and rules and of the appropriateness of such laws and rules in the light of such costs and benefits;

(4) facilitates the establishment of priorities for Federal regulatory activities;

(5) identifies the microeconomic effects of compliance costs on such economic sectors and identifies those sectors for which such costs create unduly high levels of unemployment; and

(6) develops uniform cost-accounting principles to measure compliance costs.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) the term "agency" has the meaning given to such term by section 551 (1) of title 5, United States Code;

(2) the term "agency head" means—

(A) in the case of an agency that is an Executive department or that is within an Executive department, the Secretary of the department;

(B) in the case of a multimember agency, the chairman of the agency; and

(C) in the case of an agency that is not an Executive department, within an Executive department, or a multimember agency, the individual required by law to administer the operations of the agency;

(3) the term "compliance costs" means the costs incurred by an economic sector as a result of compliance with the laws of the United States (and the rules promulgated thereunder), except that such term does not include—

(A) normal business and recordkeeping costs that would exist in the absence of such laws and rules, and

(B) amounts required to be paid under any provision of the Internal Revenue Code of 1954 or the Tariff Schedules of the United States;

(4) the term "Director" means the Director of the Office of Management and Budget;

(5) the term "economic sector" means a division, major group, industry group, or industry (as such terms are used in: United States, Office of Management and Budget, Statistical Policy Division, Standard Industrial Classification Manual, 1972);

(6) the term "Executive department" has the meaning given to such term by section 105 of title 5, United States Code;

(7) the term "fiscal year" has the meaning given to such term by section 1102 of title 31, United States Code;

(8) the term "microeconomic effects" means the effects of the compliance costs imposed by a law or rule on the prices, productivity, unemployment rate, and international competitive position of an economic sector, and on other relevant indices of the economic health of such sector; and

(9) the term "rule" has the meaning given to such term by section 551(4) of title 5, United States Code, and also includes—

(A) any rule for the administration of a program of Federal assistance to any State government or to a political subdivision thereof;

(B) any rule specifying conditions for the receipt of such Federal assistance; and

(C) any circular of the Office of Management and Budget.

REGULATORY COST INFORMATION ADVISORY COMMITTEE

SEC. 4. (a) There is established a Regulatory Cost Information Advisory Committee, which shall be composed of—

(1) the Director of the Office of Management and Budget, or the designee of the Director, who shall be Chairman;

(2) the Chairman of the Council of Economic Advisers, or the designee of the Chairman of such Council;

(3) the Chairman of the Council on Environmental Quality, or the designee of the Chairman of such Council;

(4) the Comptroller General of the United States, or the designee of the Comptroller; and

(5) two members, selected by the President from among—

(A) the Secretary of Agriculture,

(B) the Secretary of Energy,

(C) the Secretary of Labor,

(D) the Secretary of Transportation,

(E) the Administrator of the Environmental Protection Agency, or

(F) the Chairman of the Federal Trade Commission, or the designee of such member.

(b) The Regulatory Cost Information Advisory Committee shall advise the Director on the establishment of standards for the compilation of information with respect to compliance costs and the microeconomic effects of such costs, on methods of evaluating the benefits of Federal regulatory activities, and on procedures and methods for the preparation of regulatory budgets in accordance with section 5 of this Act.

COMPILATION AND ESTIMATION OF COMPLIANCE COSTS

SEC. 5. (a) Within eighteen months after the date of the enactment of this Act, the Director shall, after providing public notice and an opportunity for comment in accordance with section 553 of title 5, United States Code, and after consultation with the Regulatory Cost Information Advisory Committee established under section 4 of this Act—

(1) prescribe standards for the methods and criteria to be employed by agencies in compiling information necessary to provide estimates of—

(A) the compliance costs incurred, or to be incurred, by economic sectors under the laws of the United States (and the rules promulgated thereunder), and

(B) the microeconomic effects of such costs; and

(2) provide guidelines for evaluating the benefits of Federal regulatory activities; and

(3) from time to time revise such standards and guidelines to reflect changes in relevant economic and social circumstances and advances in branches of knowledge pertinent to the compilation of such information and the evaluation of such benefits.

(b) The standards and guidelines prescribed under subsection (a) shall provide, to the extent possible, for—

(1) uniform compliance cost categories and uniform categories of microeconomic effects;

(2) methods to be employed by agencies, in compiling information with respect to compliance costs, that minimize the costs imposed upon economic sectors by the compilation of such information while ensuring reasonably accurate estimates of such compliance costs;

(3) methods for preventing agency disclosure of information that is—

(A) submitted by any person to an agency under this Act,

(B) confidential commercial or financial information, and

(C) not required by the laws of the United States to be disclosed;

(4) procedures for agencies to report to the Director information concerning compliance costs, microeconomic effects, and regulatory benefits; and

(5) such other procedures, guidelines, and standards for the estimation of compliance costs and microeconomic effects and the evaluation of the benefits of Federal regulatory activities as will promote the economical compilation of necessary information with respect to such costs, such effects, and such benefits.

SUBMISSION OF REGULATORY BUDGET INFORMATION TO DIRECTOR

SEC. 6. (a)(1) Each year, at a time prescribed by the Director, each agency head shall prepare and submit to the Director a report setting forth, for each economic sector specified by the Director under paragraph (2), estimates of the compliance costs to be incurred during such fiscal year, and each of the next two succeeding fiscal years, under each of the laws of the United States administered by such agency (and the rules promulgated thereunder), as each such law or rule is in effect on the day before the date on which the Director requires the agency to submit such report.

(2)(A) The Director may limit the number of economic sectors with respect to which an agency shall submit information under paragraph (1) for any fiscal year.

(B) If the Director limits the number of sectors with respect to which information is required to be submitted for a fiscal year, the Director shall specify the sector or sectors with respect to which such information shall be submitted.

(b) Upon the request of the Director, any agency head required to submit a report under subsection (a) shall submit to the Director, in such form as the Director may prescribe—

(1) information, with respect to the matters required to be included in such report, that has become available since the submission of such report; and

(2) any other information that the Director determines to be necessary to prepare the regulatory budget required to be submitted under section 7 for the fiscal year beginning on October 1 of the calendar year following such year.

SUBMISSION OF REGULATORY BUDGET TO THE CONGRESS

SEC. 7. (a) Each year, on a date that is not later than thirty days after the date on which the President transmits a budget to the Congress pursuant to section 1105 of title 31, United States Code, the President shall submit to the Congress a regulatory budget of the United States Government for the fiscal year beginning on October 1 of such year.

(b) The regulatory budget required to be submitted under subsection (a) for a fiscal year shall include—

(1) recommendations with respect to the economic sectors for which the Congress should modify the compliance costs to be incurred during such fiscal year and each of the next two succeeding fiscal years under Federal laws and rules;

(2) estimates of the compliance costs to be incurred by each such sector during each such fiscal year under each of the laws of the United States (and the rules promulgated thereunder), as each such law and rule is in effect on the day before the date on which such regulatory budget is submitted;

(3) estimates of the microeconomic effects of the compliance costs to be incurred under such laws and rules by each such sector during each such fiscal year, as such laws and rules are in effect on such day;

(4) an evaluation of the benefits of each such law or rule, as such law or rule is in effect on such day;

(5) recommendations with respect to the compliance costs that should be incurred by each such sector under each such law or rule during each such fiscal year;

(6) recommendations with respect to changes in such laws that will modify the compliance costs to be incurred by each such sector under each such law or rule during each such fiscal year to equal the compliance costs recommended under paragraph (5) to be incurred by such sector under such law or rule during such fiscal year,

and shall be accompanied by a bill containing proposals for legislation to implement the changes recommended under paragraph (6) of this subsection.

(c) The regulatory budget required to be submitted under subsection (a) for a fiscal year shall set forth in such form and detail as the President may determine—

(1) information on the regulatory functions and activities of the Government, the microeconomic effects of the compliance costs imposed by such activities, the benefits of such activities, and the relationship of such functions and activities to national needs;

(2) an estimate, with respect to each change in a law or rule of the United States recommended under paragraph (6) of subsection (b), of—

(A) the amount by which such change, if enacted, would modify the compliance costs to be incurred by any economic sector, recommended to be included in the regulatory budget for such fiscal year by the President under paragraph (1) of such subsection, under such law or rule during such fiscal year and each of the next two succeeding fiscal years;

(B) the ways in which such change, if enacted, would alter the microeconomic effects of the compliance costs to be incurred by each such sector during such fiscal years; and

(C) the ways in which such change, if enacted, would alter the benefits of such law or rule; and (3) any other desirable classifications of data.

(d)(1) Not later than July 15 of each year, the President shall submit to the Congress a supplemental summary of the regulatory budget submitted to the Congress under subsection (a) during such year.

(2) The supplemental summary required to be submitted under paragraph (1) shall include—

(A) any changes in the estimates and recommendations contained in the regulatory budget to which such supplemental summary relates that are necessary to reflect changes in the laws of the United States (and the rules promulgated thereunder) that became effective after the submission of such regulatory budget; and

(B) any other information that the President deems to be necessary or desirable to provide the Congress with the information that is necessary to make the determinations required under section 8.

CONGRESSIONAL CONSIDERATION OF REGULATORY BUDGET

SEC. 8. (a) The bill required under section 7(b) to accompany the regulatory budget submitted by the President for a fiscal year shall be introduced (by request) in the Senate by the chairman and ranking minority member of the Committee on Governmental Affairs of the Senate, and in the House of Representatives by the chairman and ranking minority member of the Committee on Government Operations of the House of Representatives.

(b) (1) Such bill shall be referred first to the Committee on Government Affairs of the Senate and the Committee on Government Operations of the House of Representatives, as the case may be, each of which shall consider and report such bill to its House, with any proposed modifications of such bill, before April 1 of the year in which such bill is required to be submitted by the President.

(2) (A) After the Committee on Government Affairs of the Senate and the Committee on Government Operations of the House of Representatives report such bill pursuant to paragraph (1), such bill shall be referred concurrently to each of the standing committees of the Senate and the House of Representatives having legislative jurisdiction over the subject matter of any of the provisions contained in such bill. Each committee to which such bill is referred under the preceding sentence shall, within thirty days after the date on which such bill is referred to such committee, consider such bill and submit any proposals for modifications to be made to such bill that have been adopted by such committee to the Committee on Governmental Affairs of the Senate or the Committee on Government Operations of the House of Representatives, as the case may be.

(B) Any proposals for modifications to be made to such bill that are submitted under subparagraph (A) shall be accompanied by such information as the Committee on Governmental Affairs of the Senate or the Committee on Government Operations of the House of Representatives, as the case may be, deems to be necessary for preparation of the report required to be made under subsection (c) with respect to the bill required to be reported under paragraph (3).

(3) Not later than ten days after standing committees are required to submit proposals for modifications to be made to such bill under paragraph (2), the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives shall each report to its House a bill that incorporates, without further substantive revision, the modifications proposed to be made to such bill by committees of such House under paragraph (2).

(c) Any bill reported under paragraph (1) or (3) of subsection (b) for a fiscal year shall be accompanied by a report that sets forth—

(1) estimates of the compliance costs to be incurred by each of the sectors specified in the regulatory budget to which such bill relates (and any other economic sectors specified by the committee reporting such bill, in the case of a bill reported under subsection (b) (1), or by a committee submitting proposals for modifications under subsection (b) (2), in the case of a bill reported under subsection (b) (3)) during such fiscal year, and each of the next two succeeding fiscal years, under each of the laws of the United States (and the rules promulgated thereunder), as each such law or rule is in effect on the day before the date on which such bill is reported;

(2) an analysis of the benefits of each such law or rule, as such rule is in effect on such day;

(3) estimates of the compliance costs to be incurred by each such economic sector during each such fiscal year under each such law or rule if the proposals for legislation that are contained in the bill submitted by the President under section 7(b) for such fiscal year are enacted;

(4) estimates of the compliance costs to be incurred by each such economic sector during each such fiscal year under each such law or rule if the proposals for legislation that are contained in the bill reported by such committee are enacted; and

(5) estimates of the microeconomic effects of the compliance costs to be incurred by each such sector for each such fiscal year under the laws and rules of the United States—

(A) as such laws and rules are in effect on the day specified in paragraph (1),

(B) as such laws and rules would be in effect if the proposals for legislation contained in the bill described in paragraph (2) were enacted, and

(C) as such laws and rules would be in effect if the proposals for legislation contained in the bill reported by such committee were enacted.

(d)(1) The Senate and the House of Representatives shall proceed to a vote on the bill required to be reported under paragraph (3) of subsection (b) not later than July 31 of the year in which such bill is required to be reported.

(2)(A) Except as provided in subparagraph (B), the provisions of section 305 of the Congressional Budget Act of 1974 (2 U.S.C. 636) for the consideration of concurrent resolutions on the budget and conference reports thereon shall also apply to consideration of bills required to be reported under paragraph (3) of subsection (b).

(B)(i) Debate in the Senate on any bill required to be reported under paragraph (3) of subsection (b), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours.

(ii) General debate in the House of Representatives on any bill required to be reported under paragraph (3) of subsection (b) shall be limited to not more than 5 hours, which shall be divided equally between the majority and minority parties.

(3) It shall not be in order in either the House of Representatives or the Senate to consider any resolution providing for the adjournment sine die of either House unless such House has proceeded to a vote on a bill required to be reported under paragraph (3) of subsection (b) for the fiscal year beginning on October 1 of the year in which such bill is required to be reported.

(e)(1)(A) If the Senate and the House of Representatives each adopt a bill required to be reported under paragraph (3) of subsection (b) for a fiscal year, and a conference is requested with respect to either such bill, the Congress shall complete action on the conference report with respect to such bill not later than—

(i) 10 days after such conference is requested, or

(ii) September 15 of the year in which such bill is required to be reported,

whichever is earlier.

(B) The joint explanatory statement accompanying a conference report made under subparagraph (A) shall set forth the economic sectors with respect to which the changes made in the laws of the United States by such conference report relate, and estimates of the compliance costs to be incurred by each such economic sector during such fiscal year, and each of the two succeeding fiscal years, under each such law, as such law is amended by the provisons of such conference report.

(2)(A) If the Senate and the House of Representatives each adopt a bill required to be reported under paragraph (3) of subsection (b), and no conference is requested on either such bill, the Congress shall complete action on one such bill not later than—

(i) 10 days after the date of the adoption of the last such bill to be adopted, or

(ii) Septermber 15 of the year in which such bills are required to be reported,

whichever is earlier.

(B) Within 10 days after the Congress has completed action on a bill described in subparagraph (A), the Committee on Governmental Affairs of the Senate and the Committee on Government Operation of the House of Representatives shall prepare jointly with respect to such bill a report similar to the report described in subparagraph (B) of paragraph (1).

HEARINGS

SEC. 9. In developing a bill required to be reported under section 8(b)(1), the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate shall hold hearings and shall receive testimony from Members of Congress and such appropriate representatives of Federal agencies, the general public, and national organizations as the committee deems desirable.

CONGRESSIONAL BUDGET OFFICE

SEC. 10. The Congressional Budget Office shall provide the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and any other committee of the Congress with such information as will assist such committee in the discharge of its duties under this Act.

POINT OF ORDER

SEC. 11. After the Congress has completed action on a bill required to be reported under section 8(b)(3) for a fiscal year, it shall not be in order in either the House of Representatives or the Senate to consider any bill, resolution, or amendment if, in carrying out such bill, resolution, or amendment, the compliance costs to be incurred by an economic sector specified in the report required by section 8(f) to accompany such bill would be increased during such fiscal year or either of the next two succeeding fiscal years.

EXERCISE OF RULEMAKING POWERS

SEC. 12. (a) The provisions of this Act (except sections 6 and 7) are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(b)(1) Any provision of this Act (except sections 6 and 7) may be waived or suspended in the Senate by a majority vote of the Members voting, a quorum being present, or by the unanimous consent of the Senate.

(2) Appeals in the Senate from the decisions of the Chair relating to any such provision shall, except as otherwise provided therein, be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution or bill, as the case may be.

EFFECTIVE DATE; APPLICATION

SEC. 13. (a) Except as provided in subsection (b), the provisions of this Act shall become effective on the date of the enactment of this Act and shall terminate on the last day of the last fiscal year to which the provisions specified in subsection (b) apply.

(b) The amendments made by sections 6 through 13 of this Act shall apply with respect to the third fiscal year beginning after the date occurring one year after the date of the enactment of this Act, and to the first four fiscal years beginning after such fiscal year.

(c)(1) The regulatory budget transmitted by the President pursuant to section 7 of this Act for the third fiscal year beginning after the date occurring one year after the date of the enactment of this Act shall contain recommendations with respect the compliance costs to be incurred under each of the laws of the United States (and rules promulgated thereunder) during such fiscal year by—

(A) State and local governmental offices and establishments engaged in one or more of the following activities:

(i) the maintenance of public order and safety,

(ii) public finance and taxation,

(iii) the administration of programs relating to human resources,

(iv) the administration of programs relating to environmental quality,

(v) the administration of programs relating to housing,

(vi) the administration of programs relating to education,

(vii) the administration of programs relating to labor,

(viii) the administration of programs relating to natural resources, or

(ix) the provision of local, suburban, and passenger transportation; and

(B) any other economic sector for which the President determines that it is desirable to determine the compliance costs to be incurred during such fiscal year.

(2) In addition to revising the recommendations contained in the regulatory budget submitted for the fiscal year specified in paragraph (1), the regulatory budget transmitted by the President pursuant to section 7 of this Act for the first fiscal year beginning after such fiscal year shall contain recommendations with respect to the compli-

ance costs to be incurred under each of the laws of the United States (and rules promulgated thereunder) during such first succeeding fiscal year by—

(A) establishments primarily engaged in one or more of the following activities:

(i) the manufacture or assembly of complete passenger automobiles, trucks, commercial cars, buses (except trolleys), or special purpose vehicles;

(ii) the generation, transmission, or distribution of electrical energy for sale;

(iii) the smelting and refining of ferrous and nonferrous metals from ore, pig, or scrap;

(iv) the rolling, drawing, or alloying of ferrous or nonferrous metals;

(v) the manufacture of castings or other basic products of ferrous or nonferrous metals;

(vi) the manufacture of rails, spikes, or insulated wire or cable; or

(vii) the manufacture of tires, rubber footwear, mechanical rubber goods, heels and soles, or rubber sundries from natural, synthetic, or reclaimed rubber, gutta percha, or gutta siak; and

(B) any other economic sector for which the President determines that it is desirable to determine the compliance costs to be incurred during such fiscal year.

(3) In addition to revising the recommendations contained in the regulatory budget submitted for the preceding fiscal year, the regulatory budget transmitted by the President pursuant to section 7 of this Act for the second fiscal year beginning after the fiscal year specified in paragraph (1) shall contain recommendations with respect to the compliance costs to be incurred under each of the laws of the United States (and rules promulgated thereunder) during such second succeeding fiscal year by—

(A) general contractors and operative builders primarily engaged in the construction of residential, farm, industrial, commercial or other buildings; or

(B) general contractors engaged in heavy construction (including new work, additions, improvements, maintenance, and repair) such as highways and streets, bridges, sewers, railroads, irrigation projects, flood control projects and marine construction, and miscellaneous types of construction work (other than buildings); and

(C) any other economic sector for which the President determines that it is desirable to determine the compliance costs to be incurred during such fiscal year.

(4) In addition to revising the recommendations contained in the regulatory budget submitted for the preceding fiscal year, the regulatory budget transmitted by the President pursuant to section 7 of this Act for the third fiscal year beginning after the fiscal year specified in paragraph (1) shall contain recommendations with respect to the compliance costs to be incurred under each of the laws of the United States (and rules promulgated thereunder) during such third succeeding fiscal year by—

(A) establishments primarily engaged in one or more of the following activities:

(i) the production of basic chemicals;

(ii) the manufacture of products by predominantly chemical processes;

(iii) mining, developing mines, or exploring for metallic minerals (ores);

(iv) the production of anthracite coal;

(v) the production of bituminous coal; or

(vi) mining, quarrying, developing mines, or exploring for nonmetallic minerals (except fuels); and

(B) any other economic sector for which the President determines that it is desirable to determine the compliance costs to be incurred during such fiscal year.

(5) In addition to revising the recommendations contained in the regulatory budget submitted for the preceding fiscal year, the regulatory budget transmitted by the President pursuant to section 7 of this Act for the fourth fiscal year beginning after the fiscal year specified in paragraph (1) shall contain recommendations with respect to the compliance costs to be incurred under each of the laws of the United States (and rules promulgated thereunder) during such fourth succeeding fiscal year by—

(A) establishments primarily engaged in one or more of the following activities:

(i) furnishing transportation by line-haul railroad, or operating a switching or terminal establishment;

(ii) furnishing local or long distance trucking or transfer services, without storage; and

(iii) furnishing domestic or foreign transportation by air, operating airports or flying fields, or furnishing air terminal services; and

(B) any other economic sector for which the President determines that it is desirable to determine the compliance costs to be incurred during such fiscal year.

(d) Notwithstanding any other provision of this Act, no regulatory budget transmitted or adopted under the provisions of this Act with respect to the fiscal year specified in paragraph (1) of subsection (c) shall contain information, recommendations, or specifications with respect to the compliance costs and microeconomic effects for any other fiscal year.●

By Mr. DOLE (for himself, Mr. BIDEN, Mr. HEINZ, Mr. ROTH, Mr. D'AMATO, Mrs. HAWKINS, Mr. CRANSTON, Mr. DURENBERGER, Mr. TOWER, Mr. BRADLEY, and Mr. BENTSEN):

S. 1737. A bill to make permanent section 1619 of the Social Security Act, which provides SSI benefits for individuals who perform substantial gainful activity despite a severe medical impairment; to the Committee on Finance.

BENEFITS FOR HANDICAPPED INDIVIDUALS WHO WORK

Mr. DOLE. Mr. President, I am pleased to introduce a bill today that would make permanent section 1619 of the Social Security Act, which permits the payment of supplemental security income to severely impaired people who perform substantial gainful activity. Under present law, this section is scheduled to expire on December 31, 1983.

Stemming from a bill introduced by the Senator from Kansas in 1979, section 1619 was enacted as part of the Comprehensive Disability Amendments of 1980. Its expressed purpose was to remove financial barriers for handicapped people to enter or return to the work force. It was my view at that time, as it is today, that the work incentive features were the most important part of the 1980 legislation.

BACKGROUND

Individuals under age 65 who can meet a means-test qualify for SSI disability payments under the same circumstances as under the social security disability insurance program—only if, and for so long as, they are unable to engage in any substantial gainful activity (SGA). The level of earnings at which an individual is judged to be engaging in SGA is $300 monthly. Individuals with earnings in excess of this level cannot become eligible for SSI disability, despite the severity of impairment.

Prior to the enactment of the 1980 amendments, individuals who were already receiving SSI generally ceased to be eligible when their earnings exceeded $300 a month. Only an exceptional person could have surmounted the financial obstacles of this sudden transition from SSI to self-support. The disincentives to work were strong given that ineligibility for SSI generally meant the loss of eligibility for medicaid and social services as well.

The possibility that the SSI program may have been operating in such a way as to actually discourage recipients from seeking employment was of real concern to the Senator from Kansas as well as the Finance Committee. The proportion of SSI recipients on the rolls due to a severe disability was growing rapidly—from 39 percent when SSI was created in 1974 to 51 percent by mid-1978—and the success of rehabilitation efforts was questionable.

To deal directly with these problems, I introduced S. 591 on March 8, 1979. The bill included several work incentive measures, one of which created the special SSI payment status for people who worked despite a severe medical impairment. This provision was adopted by the Finance Committee as part of the Social Security Disability Amendments of 1979 and was subsequently enacted into law in the Disability Amendments of 1980.

SECTION 1619

Under section 1619 of the Social Security Act, disabled SSI recipients who work and earn more than $300 monthly are permitted to receive a special SSI payment and maintain medicaid coverage. The amount of the special payment is equal to the SSI benefit they would have been entitled to receive under the regular SSI program were it not for the all-or-none nature of eligibility with the SGA test. Special benefit status is thus terminated when the individual's earnings exceed the amount which would cause the Federal SSI payment to be reduced to zero—that is, when countable monthly earnings exceed $694. Medicaid may continue, however, if termination of benefits would seriously inhibit the individual's ability to continue working and if his or her earnings are not sufficient to provide a reasonable equivalent to the cash and other benefits.

Evidently, this was a carefully limited provision intended to provide benefits in only restrictive circumstances. There was no intention of liberalizing the definition of disability so as to make benefits payable to less severely impaired people. Rather than overhauling the disability determination process, we sought to provide relief for a specific problem—work disincentives—in a humane and cost-effective way.

On December 31, section 1619 of the Social Security Act is scheduled to expire. The provision was authorized for only 3 years in recognition of the fact that changes in the disability portions of the social security and SSI programs can have unexpected or undesirable effects on recipients and program costs.

EXPERIENCE WITH SECTION 1619

It is my judgment that section 1619 has benefited the targeted group of recipients, allowing greater independence on the part of severely handicapped Americans in a cost-effective manner. According to the most recent data compiled by the Social Security Administration, for December 1982, 247 people with earnings above SGA were receiving an SSI special cash payment. Their monthly earnings averaged $456. Some 5,600 former SSI recipients retained medicaid eligibility, and among this group, average monthly earnings amounted to $623—which is biased downward by the inclusion of 500-600 persons with low earnings in medicaid institutions. Both men and women have benefited, with women accounting for 45 percent of those receiving special payments or retaining medicaid.

CBO estimates the cost of this bill at $3.3 million in fiscal year 1984, $6.9 million in fiscal year 1985, and $9.4 million in fiscal year 1986.

I urge my colleagues to join the Senator from Kansas along with Senators BIDEN, HEINZ, ROTH, D'AMATO, HAWKINS, CRANSTON, DURENBERGER, TOWER, BRADLY, and BENTSEN in supporting this bill. Section 1619 is a small but important step toward permitting severely impaired people, who have the desire and motivation, to seek a more independent life through work effort.

● Mr. BIDEN. Mr. President, I am proud to join with Senator DOLE in introducing legislation to permanently extend section 1619 of the Social Security Act. Section 1619 allows for the continued payment of supplemental security income and/or medicaid benefits to disabled persons performing substantial gainful activity.

When considering the Social Security Disability Amendments of 1980, Congress found that many disabled persons were capable of performing some sort of gainful activity but, with an income limit at that time of less $300 per month for eligibility for SSI and medicaid, were unable to afford to accept work. The public policies of this country should provide incentives to our citizens to engage in productive activity whenever possible. But, prior to passage of the 1980 Disability Amendments, our policies were serving to encourage otherwise productive citizens in the opposite direction.

The 1980 Disability Amendments set up a 3-year program under which a disabled individual performing substantial gainful activity could continue to receive both SSI and medicaid if his or her income from that employment exceeded the normal SSI disability cap—currently $304 per month, but did not exceed the break-even point for aged and blind recipients of SSI. That cap is currently $693 per month. In addition, the recipient would be able to continue receiving medicaid benefits, though not SSI, if his or her income falls between $693 per month and a limit arrived at by taking into consideration the average medicaid cost of treating a disabled person in that State. In Delaware, that cap is currently $947 per month or $11,273 per year.

Obviously, we are not talking about benefits for anyone making a king's ransom. We are talking about people having the ability to make a decent living contributing their talents to society, while retaining access to the medical care their disabilities require. We are talking about an incentive for work.

I am fortunate to be one of the many employers in this country who have hired workers under this provision. I have seen firsthand the opportunities it can afford.

The House Ways and Means Committee estimates that this provision costs well under $5 million per year, while enabling 6,000 people to afford to accept work. But if we take away their medical benefits, these people will be unable to work. We will lose their contribution.

But section 1619 will expire at the end of this year unless action is taken. I comment Senator DOLE, whose hard work made section 1619 possible in the first place, and am proud to join as a cosponsor.●

● Mr. D'AMATO. Mr. President, I am pleased to be an original sponsor to this bill to make permanent the authorization under section 1619 of the Social Security Act. I commend the Senator from Kansas for introducing this bill which assists 6,000 disabled individuals nationwide.

The Social Security Amendments of 1980 authorized a 3-year pilot program, to run from January 1, 1981, to December 31, 1983, under which a disabled individual could continue to receive both supplementary security income (SSI) and medicaid benefits, even if his or her income exceeded the normal disability cap of $300 per month, so long as it did not exceed the Federal income cap provided for other types of SSI benefits. The Federal cap is currently $693.60 per month.

In addition, a State can agree to raise this cap. In New York, a participating State, the cap now ranges from $701.84 to $1,176.56 monthly, depending upon a person's living arrangement. Individuals whose incomes exceed the cap continue to be eligible for medicaid, but not SSI benefits, if the income remains below a higher threshold level. In New York, for example, the higher level is currently $1,264.15 monthly.

Section 1619 provides incentives to our diabled citizens to engage in productive activity whenever possible. Prior to the pilot project, public policy discouraged such attempts because disabled SSI individuals were generally denied access to medical benefits once they exceeded the disability cap.

I have spoken to a number of representatives from organizations involved in assisting the disabled as well as to several disabled individuals themselves who have expressed concern with the expiration of this section of the law. The following two paragraphs were contained in a letter to me from a New Yorker who eloquently outlines the problem that disabled individuals face:

I am twenty-seven years old, and have had juvenile rheumatoid arthritis since I was a child. My condition unfortunately prevented me from finishing college, after 2 years at Cornell University. This summer I will be taking courses at Empire State College; hopefully, I will be able to complete college and return to work. I have been receiving SSI and Medicaid for a few years now. In order to maintain my (limited) mobility, I must see my rheumatologist once a month, my rehabilitation doctor every six weeks, an occupational therapist every week, undergo various medical tests now and then, and take medicine every day. I have received excellent care as an outpatient at Bellevue Hospital, where I see my doctors and therapist. Their concerted efforts have helped me avoid serious deformity. If I didn't have Medicaid, I certainly couldn't afford all these services, which are essential to my continued well-being.

I am writing this not so much to plead my own particular case as to use myself as an example of what thousands (millions?) of handicapped people must face throughout life. I, like most people, am willing and eager to work; and I believe most handicapped persons can learn a marketable skill and work, if only for a few hours a day. However, with medical costs so high, many of us cannot earn enough, especially at first, to cover living expenses and medical bills. If this law is allowed to expire then many disabled people would be discouraged from trying to return to work.

Currently there are 684 disabled SSI individuals in New York that are covered by this section of the law. Most of them are not receiving SSI benefits, but are covered for medicaid. This section permits them to make contributions to society while still retaining access to the type of medical care

their disabilities require. I urge adoption of this important legislation.●

By Mr. DURENBERGER (for himself, Mr. SYMMS, Mr. BOREN, Mr. GRASSLEY, Mr. ZORINSKY, and Mr. MELCHER):

S. 1739. A bill to amend the Internal Revenue Code of 1954 to permit small business to reduce the value of excess inventory; to the Committee on Finance.

THOR POWER

● Mr. DURENBERGER. Mr. President, today my colleagues, Senators SYMMS, BOREN, GRASSLEY, ZORINSKY, MELCHER, and I are introducing legislation similar to that we introduced during the last session of Congress to solve one of the major tax problems confronting small businesses in the United States today—the excess and obsolete inventory problem. The controversy was created when the U.S. Supreme Court in the Thor Power case overturned a practice which is almost as old as the tax laws themselves and which is followed, indeed mandated, today for financial accounting purposes.

The IRS has formally maintained for many years that a tax deduction may not be taken for excess or obsolete inventory below its cost or market value unless it is scrapped. However, accountants, attorneys, businessmen, and most importantly, Internal Revenue Service agents in the field, have always followed the rule that a certain percentage of inventory loses all but its scrap value over time even though it is not sold for salvage. Traditionally, that loss has been deducted for tax purposes. The question has always been what percentage to writeoff.

With the decision of the Supreme Court in its favor, the Internal Revenue Service is now vigorously enforcing its longstanding regulations, reeducating its agents, and placing additional emphasis on this obsolete and excess inventory issue. Immediately following the decision, IRS issued a revenue ruling and a revenue procedure requiring taxpayers to reverse all prior deductions and accrue income in the amount of the deductions, less any prior sales.

Aside from the almost impossible accounting task required, most small business people do not have the requisite knowledge or information to comply. There has been great confusion as to who is covered by the Supreme Court decision. As a result, very few small businesses have complied with the IRS position irrespective of the good intentions of these businesses.

The Supremc Court decision unfortunately does not take cognizance of the realities of business operations. Consider for a moment the fact that a manufacturer or a dealer will stock many parts rather than sell them for salvage in order to better serve customers. After a certain period of time the chances that someone will purchase a part from this obsolete inventory is remote indeed. However, if this stock of old parts is not maintained, the customer will be forced to dispose of a piece of equipment that might have many years of life left in it except for a minor part that is no longer available.

If the manufacturer or dealer does maintain a stock of outdated items, one can hardly argue that the entire inventory is worth its initial cost or even the aggregate sales price of the individual items. Nevertheless the law is such that the taxpayer cannot devalue these items in accordance with actual business experience.

There is, however, another side to the story. The Internal Revenue Service is rightly concerned about those business people who juggle their inventory deductions from year to year to lower their taxable income. This is accomplished by taking a large deduction for excess or obsolete inventory in good years and little or no deduction in lean years. This practice cannot be condoned and to the extent that the Treasury was attempting to eliminate it by issuing regulations and procedures following the Thor Power decision, I applaud those efforts.

We can, I believe, achieve the legitimate goals of the Internal Revenue Service and at the same time provide a measure of relief and security to small businesses throughout the United States. The bill we are introducing today would wipe clean the slate for years prior to January 1, 1983. For years beginning after that date, a small business, which is defined as one with a net worth of less than $25 million, could elect to write off its excess or obsolete inventory in a prescribed, balanced manner. After an item has been in inventory for 4 years it is completely written off for tax purposes. The actual writeoff would not begin until the second year after the item is purchased, so that the deduction is taken in equal installments in the second, third, and fourth year.

The safety feature in the bill is the requirement that the taxpayer continue to use this procedure forever unless the Secretary of the Treasury permits the adoption of another accounting method. Thus, fluctuating inventory deductions will be eliminated.

The bill has several other appealing aspects. First, a taxpayer elects to use this method simply by adopting it and notifying the Internal Revenue Service. I would hope that a space could be provided on business returns for a check mark if the taxpayer elects the system. The actual application of the bill to inventory accounting is equally simple.

Additionally, it provides a significant amount of certainty and security both to the taxpayer and to the agent who conducts an audit. No longer will there be the need for time-consuming reviews of sales practices and patterns to determine whether inventory accounting is accurate. No longer will the small business person live in fear of being told by the Internal Revenue Service that he must change his entire inventory accounting system and as an added disaster be handed a large tax bill.

When this matter was first brought to the attention of the Congress several years ago there was agreement, at least in the Senate, that action should be taken to protect these small businesses. We passed a moratorium prohibiting the IRS, from acting further until we had the opportunity to explore the problem in detail. However, this moratorium did not become law. Due principally to the lack of initiative on the part of the Department of the Treasury, no further action has been taken. Nevertheless, the problem continues and in view of the tax legislation which we passed in 1982 the matter has become even more criticial. We are now imposing severe penalties upon businesses that fail to comply with the tax laws. At the same time, we have not provided the guidance for them to do so, particularly in this excess and obsolete inventory area.

In conclusion, Mr. President, I wish to note the cosponsorship of this bill by Senators of both parties, and I wish to assure all of our colleagues that we are going to work together vigorously to make this bill a reality for the benefit of our small business community in this country.●

By Mr. ABDNOR (for himself and Mr. MOYNIHAN):

S. 1739. A bill to authorize the U.S. Army Corps of Engineers to construct various projects for improvements to rivers and harbors of the United States, and for other purposes; to the Committee on Environment and Public Works.

WATER RESOURCES DEVELOPMENT ACT

Mr. ABDNOR. Mr. President, I am today introducing, with the cosponsorship of the distinguished ranking member of the Subcommittee on Water Resources (Mr. MOYNIHAN), a bill that I believe will provide the basis for major water resources legislation. This bill was discussed at some length during a subcommittee markup yesterday. I intend to ask the Subcommittee on Water Resources to continue this markup process early in September.

To assist my colleagues, it is necessary to relate a brief history of this proposal. The bill I am introducing is based on S. 947, as well as a number of other bills that have been considered during 8 days of hearings by our subcommittee. Each and every project report included in this bill has been

approved by the Chief of Engineers. In total, the bill authorizes some $6 billion in new projects, a level that is limited under the provisions in title I of the bill.

One type of project is missing from this bill: projects for deep-draft harbor development. I intend to ask the subcommittee to consider the complicated issue of deep-draft harbor development separately in September. We need to act in that manner because separate deep-harbor legislation, by unanimous consent, has been referred jointly to the Committees on Environment and Public Works and Finance.

Mr. President, another issue that is not dealt with in this bill is the question of the use of waters from the Missouri River. As my colleagues know, I feel very strongly about this issue, and intend to see to it that the people of South Dakota are treated fairly. In an early draft of this bill, I included language that would treat all users of the Missouri River in an equitable manner. After some of my colleagues expressed concern over the language—and after it became clear that a willingness existed to work toward a responsible compromise—I have dropped this provision for now. I shall offer it—or, preferably, an acceptable compromise—during the subcommittee markup in September.

As one final point, I should note that important provisions in this bill deal with project cost sharing and potential inland waterway development and use charges. I believe we have developed sensible compromise positions that meet the goal of the administration and proponents of the existing system. I hope that those groups interested in this issue will recognize the compromise nature of these provisions.

Mr. President, I ask unanimous consent that a copy of the bill be printed at this point in the RECORD, together with a section-by-section analysis of the bill:

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1739

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Water Resources Development Act of 1983."

TITLE I

Notwithstanding any other provision of law, the Secretary of the Army, acting through the Chief of Engineers (hereinafter in this Act referred to as the "Secretary"), shall obligate no sums in excess of the sums specified in this title for the combined purpose of the "Construction General" account and the "Flood Control, Mississippi River and Tributaries" account:

(1) For the fiscal year ending September 30, 1984, the sum of $1.5 billion.

(2) For the fiscal year ending September 30, 1985, the sum of $1.5 billion.

(3) For the fiscal year ending September 30, 1986, the sum of $1.6 billion.

(4) For the fiscal year ending September 30, 1987, the sum of $1.6 billion.

(5) For the fiscal year ending September 30, 1988, the sum of $1.7 billion.

Nothing contained herein limits or otherwise amends authority conferred under section 10 of the River and Harbor Act of September 22, 1922 (42 Stat. 1043; 33 U.S.C. 621). Any amounts obligated against funds furnished or reimbursed by Federal or non-Federal interests shall not be counted against the limitation on obligations provided for in this Act.

TITLE II—GENERAL PROVISIONS

SEC. 201. (a) Prior to initiating construction of any water resources project authorized prior to this Act, in this Act, or subsequent to the Act, which is under the jurisdiction of the Secretary and which can be anticipated to provide flood control benefits, more than 10 per centum of which are produced by an increase in anticipated land values to a single landowner, the Secretary shall enter into an agreement with such owner or owners that provides that such owner or owners will contribute, either prior to construction or when such benefits are realized, 50 per centum of that portion of the project's costs allocated to the owner's benefits.

(b) For any study initiated by the Secretary subsequent to the enactment of this Act, the Secretary shall, if appropriate, include information in such study report on the likelihood that any single landowner would be subject to the requirements of subsection (a) of this section.

SEC. 202. Any report that is submitted to the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives by the Secretary of Agriculture under authority of Public Law 83-566, as amended, or by the Secretary, shall describe the benefits of other, similar public recreational facilities within the general area of the project, and the anticipated impact of the proposed project on such existing recreational facilities.

SEC. 203. (a) Any project or separable element thereof, that is under the responsibility of the Secretary, and for which construction has not commenced within ten years following the date of the authorization of such project, shall no longer be authorized after such ten-year period unless the Secretary, after consultation with the affected State or States, notifies the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives that continued authorization of such project remains needed and justified.

(b) Any project or separable element thereof, qualifying for deauthorization under the terms of this section or which will qualify within one year of enactment of this section, shall not be deauthorized until such one-year period has elapsed.

SEC. 204. (a) Any resolution authorizing a survey by the Secretary is automatically rescinded and is no longer authorized if no funds are expended for such survey within four full fiscal years following its approval.

(b) The Secretary is authorized and directed to submit to the Congress, within six months of enactment of this section, a list of all existing studies, whether authorized by resolution or by law, that have an inactive or deferred status, and all surveys on such list may be deauthorized within ninety days thereafter by resolution of either the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives.

SEC. 205. The second sentence of the definition of "works of improvement", contained in section 2 of Public Law 83-566, as amended, is further amended by adding after "$250,000" the following: "but not more than $10,000,000, for any projects submitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives: *Provided,* That any project with an anticipated Federal cost exceeding $10,000,000 must be authorized by Act of Congress.".

SEC. 206. Section 2 of Public Law 83-566, as amended, is further amended by deleting the period and inserting a colon at the conclusion of the proviso, and adding the following: "And provided further, That each such project must contain benefits directly related to agriculture that account for at least 20 per centum of the total benefits of the project.".

SEC. 207. The Secretary of Agriculture, acting through the Administrator of the Soil Conservation Service, shall study and report to the appropriate committees of the Senate and the House of Representatives by April 1, 1985, on the feasibility, the desirability, and the public interest involved in requiring that full public access be provided to all water impoundments that have recreation-related potential and that were authorized pursuant to Public Law 83-566, as amended.

SEC. 208. Notwithstanding any other provision of law, the development, expansion, and rehabilitation of municipal and industrial water supply and distribution systems, either alone or as part of a multiple purpose project, is hereby declared to be a legitimate Federal purpose. Any single purpose municipal and industrial water supply project authorized by law may be implemented by the Secretary or by a non-Federal interest in consultation with the Secretary.

SEC. 209. Subsection (a) of section 134 of Public Law 94-587 is amended to read as follows:

"(a) The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed within ninety days after enactment of this Act to institute a procedure enabling the engineer officer in charge of each district under the direction of the Chief of Engineers to certify, at the request of local interests, that particular local improvements for flood control can reasonably be expected to be compatible with a specific, potential project then under study or other form of consideration. Such certification shall be interpreted to assure interests that they may go forward to construct such compatible improvements at local expenses with the understanding that such improvements can be reasonably expected to be included with the scope of the Federal project, if later authorized, both for the purposes of analyzing the cost and benefits of the project and assessing the local participation in the costs of such project.".

SEC. 210. (a) The Secretary shall undertake a program of research for the control of river ice, and to assist communities in breaking up such ice, which otherwise is likely to cause or aggravate flood damage or severe streambank erosion.

(b) The Secretary is further authorized to provide technical assistance to local units of government to implement local plans to control or break up river ice. As part of such authority, the Secretary shall acquire necessary ice-control or ice-breaking equipment

that shall be loaned to local units of government.

(c) For the purposes of this section, the sum of $5,000,000 is authorized to be appropriated to the Secretary in each of the fiscal years ending September 30, 1984, through September 30, 1988, such sums to remain available until expended.

(d) No later than March 1, 1987, the Secretary shall report to the Congress on activities under this section.

SEC. 211. (a) The Secretary shall, upon the request of local public officials, survey the potential and methods for rehabilitating former industrial sites, millraces, and similar types of facilities already constructed for use as hydroelectric facilities. The Secretary shall, upon request, provide technical assistance to local public agencies, including electric cooperatives, in designing projects to rehabilitate sites that have been surveyed, or are qualified for survey, under this section.

(b) There is authorized to be appropriated to the Secretary, to implement this section, the sum of $5,000,000 for each of the fiscal years ending September 30, 1984, through September 30, 1988, such sums to remain available until expended.

SEC. 212. Section 221(b) of the Flood Control Act of 1970 (Public Law 91-611) is amended by deleting the period at the end thereof, inserting a colon, and adding the following: *Provided*, That where the non-Federal interest is the State itself, the agreement may reflect that it does not obligate future legislative appropriations or other funds for such performance and payment when obligating future appropriations or other funds would be inconsistent with State constitutional limitations.".

SEC. 213. Notwithstanding any other provision of law, construction on any project newly authorized in this Act shall not commence until the project has been studied by the Chief of Engineers and reported favorably thereon.

SEC. 214. Subject to the provisions and requirements of Title VI of this Act, the sums to be appropriated for any project authorized by this Act shall not exceed the sum listed in this Act for the specific project, as of the month and year listed for such project (or, if no date is listed, the cost shall be considered to be as of the date of the enactment of this Act), plus such amounts, if any, as may be justified solely by reason of increases in construction costs, as determined by engineering cost indices applicable to the type of construction involved, or by reason of increases in land costs.

SEC. 215. The Secretary shall not require, under section 4 of the Flood Control Act of December 22, 1944 (58 Stat. 889), and the Federal Water Project Recreation Act, non-Federal interests to assume operation and maintenance of any recreational facility operated by the Secretary at any water resources project as a condition to the construction of new recreational facilities at such project or any other water resources project.

SEC. 216. (a) The Secretary may enter into a contract with a State or political subdivision thereof prior to the construction and operation, improvement or financing of a project undertaken by the Secretary which will return an appropriate share of the costs of such project based upon the identifiable benefits to local participants or interests utilizing or acquiring facilities or property owned, managed or operated by the State or political subdivision thereof as determined by an analysis of the expected economic activity. Such costs shall be recovered through an incremental charge to be imposed on each sale, lease, fee, or other transaction at the time revenues are realized engaged in by the State or political subdivision which are identified in the contract as the source of revenues.

(b) The Secretary may enter into an agreement providing for the recovery of an appropriate share of the costs of a project with a Federal Project Repayment District or other political subdivision of a state prior to the construction, operation, improvement, or financing of the project. The Federal Project Repayment District or other political subdivision shall include lands adjacent to the public works facility which receive identifiable benefits from the construction or operation of the public works facility. Such districts shall be established in accordance with State law, shall have specific boundaries which may be changed from time to time based upon further evaluations of benefits, and shall include the power to collect a portion of the transfer price from any transaction involving the sale, transfer, or change in beneficial ownership of lands and improvements within the district boundaries. The portion of such transfer price shall provide an equitable share of the costs of such project based upon projections of transactions in lands and improvements with the district.

(c) The provisions of this section may be utilized as an alternate solely or in conjunction with other provisions of Federal law imposing a cost recovery obligation. Cost recovery pursuant to the provisions of this section shall be deemed to meet cost recovery requirements of other provisions of Federal law if the economic study required by subsection (d) of this section demonstrates that income to the Federal Government equals or exceeds that required over the term of repayment required by that cost recovery provision.

(d) Prior to execution of an agreement pursuant to subsection (b) or (c) of this section, the Secretary shall require and approve a study from the State or political subdivision demonstrating that the revenues to be derived from a contract under this section or an agreement with a Federal Project Repayment District will be sufficient to equal or exceed the cost recovery requirements over the term of repayment required by Federal law. Any project under this section shall also meet all other applicable criteria of Federal law.

(e) For the purposes of this section, the term:

(1) "Contract" means a contract entered into with a State or a political subdivision of a State through which the Federal Government participates in a share of the revenues derived by the State or political subdivision from the lease, license, or sale of property or other products, services, or rights made available to non-governmental interests.

(2) "Federal Project Repayment District" means a benefit district or entity created pursuant to State law having defined boundaries based upon identifiable benefits to be derived from the construction and operation of a public works facility.

(3) "Cost recovery" means any requirement of federal law that beneficiaries of a public works facility return all or a portion of the federal investment in the facility's construction, operation or maintenance costs through fees, duties, taxes, user fees, repayment charges or other obligations requiring monetary or other contributions including the provisions of subsection (a) and (b) of this section.

TITLE III—PROJECT PROVISIONS

SEC. 301. (a) The Secretary is authorized and directed to take, at a cost of $4,117,991, such action, substantially in accordance with the study directed by the District Engineer and dated July 20, 1981, as may be necessary to correct erosion problems along the banks of the Warrior River in order to protect Mound State Park, near Moundville, Alabama.

(b) The Secretary is authorized to preserve and protect the Fort Toulouse National Historic Landmark and Taskigi Indian Mound in the county of Elmore, Alabama, by instituting bank stabilization measures at a cost of $15,400,000.

(c) The Secretary in order to protect the cultural, economic, environmental, and historical resources of Tangier Island, Virginia, located in Chesapeake Bay, is authorized and directed to design and construct a structure approximately eight thousand two hundred feet in length on the western shore of Tangier Island, adequate to protect such island from further erosion.

(d) Prior to any construction under this section, non-Federal interests shall provide without cost to the United States all necessary lands, easements, rights-of-way, and relocations, agree to operate and maintain the structures after construction, and hold and save the United States free from damages due to the construction works.

(e) Notwithstanding the provisions of this section, the Secretary shall give priority in the allocation of funds for design and construction of projects for the purposes of erosion control to projects authorized prior to the enactment of this Act.

SEC. 302. The Secretary is authorized and directed to relocate the site of disposal for dredge spoil from the Christina River in Wilmington, Delaware, from the current location at Cherry Island to a site on the Delaware River between the Wilmington Marine Terminal and Pigeon Point.

SEC. 303. (a) The Secretary is authorized to construct, at Federal expense, a set of emergency gates in the conduit of the Abiquiu Dam. New Mexico, to increase safety and enhance flood and sediment control: *Provided*, That such feature, which was eliminated during original construction due to cost constraints, shall be considered as completing the original design concept for the project.

(b) For purposes of this section, the sum of $2,500,000 is authorized to be appropriated to the Secretary.

SEC. 304. The Secretary shall promptly transfer to the responsibility of the district engineer in Albuquerque, New Mexico, those portions of the State of New Mexico that as of the date of enactment of this Act, were under the responsibility of the district engineers in Sacramento, California, and Los Angeles, California.

SEC. 305. The Richard B. Russell Dam and Lake project, authorized by the Flood Control Act of 1966 (80 Stat. 1420), is hereby modified to authorize the Secretary to provide such power to the city of Abbeville, South Carolina, as the Secretary determines to be necessary to mitigate the reduction in hydroelectric power produced at the city-owned hydroelectric plant at Lake Secession caused by the construction and operation of the project. Such power shall be provided to the city for a period not to exceed the remaining service life of the city-owned hydroelectric plant as part of the operational requirements and costs of the project under such terms and conditions as the Secretary,

in consultation with the Secretary of Energy, determines to be appropriate. The Secretary of Energy is authorized to provide assistance in the delivery of such power.

SEC. 306. The Waterbury, Vermont, project in the Winooski River Basin, authorized for modification in section 10 of the 1944 Flood Control Act, approved as Public Law 78-534 of December 22, 1944, is hereby further modified to provide that any major rehabilitation of such project shall be undertaken by the Secretary. Nothing in this section shall be construed as altering the conditions established in the Federal Power Commission license numbered 2090, issued on September 16, 1954.

SEC. 307. The city waterway navigation channel project, Tacoma Harbor, Washington, authorized by the first section of the River and Harbor Act of June 13, 1902 (32 Stat. 347), is hereby modified to direct the Secretary to redefine the boundaries of such project in accordance with the recommendations contained in appendix B of the feasibility report of the Seattle District Engineer, dated November 1981.

SEC. 308. (a) The Secretary in cooperation with the governments of the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands, is hereby authorized and directed to study and draft plans for development, utilization, and conservation of water and related land resources of such territory and Commonwealth.

(b) Studies authorized by this section shall include appropriate consideration of the needs for flood protection, wise use of flood plain lands, navigation facilities, hydroelectric power generation, regional water supply and waste water management facilities systems, general recreational facilities, enhancement and control of water quality, enhancement and conservation of fish and wildlife, and other measures for environment improvement and economic and human resources development. Such studies shall also be compatible with comprehensive development plans formulated by local planning agencies and other interested Federal agencies.

(c) There is authorized to be appropriated a sum of $175,000 to carry out the provisions of this section.

SEC. 309. The second paragraph under the center heading "Brazos River Basin" in section 10 of the Flood Control Act of 1946 (60 Stat. 641) is amended by inserting "or water supply" after "irrigation".

SEC. 310. Notwithstanding any other provision of law, the Secretary, in cooperation with the Secretary of the Interior and the Secretary of Energy, shall—

(a) quantify the hydroelectric pumping power requirements for irrigation units of the Missouri River Basin project within the State of South Dakota authorized for ultimate development by section 9 of the Flood Control Act of December 2, 1944 (58 Stat. 877, Public Law 534, 78th Congress, 2nd Session) and accompanying House Document Numbered 475 and Senate Documents Numbered 191 and 247, and by section 18 of the Flood Control Act of July 24, 1946 (60 Stat. 641, Public Law 526, 79th Congress, 2nd Session), and

(b) until such power is used for irrigation pumping in the State of South Dakota under the Pick-Sloan Missouri Basin program, make available such power at the pumping rate authorized in the Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433), for the purpose of pumping Missouri River water up to the point of field turnout or the calculated equivalent of such point for irrigation facilities designated by the State of South Dakota as subunits of the South Dakota Missouri River Pumping program to be established by the State of South Dakota for the purpose of providing main delivery irrigation pumping service for lands in the State of South Dakota, or for such other purposes and on such terms and conditions as shall be specified by the State of South Dakota: *Provided*, That except for the purposes of pumping Missouri River water for irrigation or pumping at the Gregory County Hydroelectric Pumped Storage Facility, the power provided in this Act for the benefit of the State of South Dakota shall not be resold at less than the then current market rate and any revenue from the resale of such power shall be used by the State for economic or natural resources development purposes. The delivery of power for the benefit of the State of South Dakota under the provisions of this section shall not be considered to require or justify the reallocation of costs as currently allocated to achieve the ultimate development of the Pick-Sloan Missouri Basin program. Notwithstanding any other provision of law, irrigation pumping subunits of the South Dakota Missouri River Pumping program shall not be required to contract for a supply of water, nor be assessed any charges for the cost of construction, operation or maintenance of facilities used to generate such irrigation pumping power or to store water under the Pick-Sloan Missouri River Basin program in excess of the then current rate charged preference power customers under firm power contracts for such costs, nor be assessed any fee for the right to use Missouri River water whether impounded or not.

SEC. 311. The project for Jackson Hole Snake River local protection and levees, Wyoming, authorized by the River and Harbors Act of 1950 (Public Law 81-516), is hereby modified to provide that the operation and maintenance of the project, and additions and modifications thereto constructed by non-Federal interests, shall be the responsibility of the Secretary of the Army, acting through the Chief of Engineers: *Provided*, That non-Federal interests shall pay the initial $35,000 in cash or materials, of any such cost expended in any one year.

SEC. 312. The project for flood protection for the Rio Grande Floodway, Truth or Consequences Unit, New Mexico, authorized by the Flood Control Acts of 1948 and 1950, is hereby modified to provide that the Secretary is authorized to construct a flood control dam on Cuchillo Negro Creek a tributary of the Rio Grande, in lieu of the authorized floodway.

SEC. 313. The Secretary is authorized and hereby directed to consider the historic Acequia Systems (community ditches) of the Southwestern United States as public entities, if these systems are chartered by the respective State laws as political subdivisions of that State. This public entity status will allow the officials of these Acequia Systems to enter into agreements and serve as local sponsors of water-related projects of the Secretary.

SEC. 314. (a) The Secretary is authorized to implement a program of research in order to demonstrate the cropland irrigation and conservation techniques described in the report issued by the New England Division Engineer, dated May 1980, for the Saint John River Basin, Maine.

(b) For the purposes of this section, there is authorized to be appropriated to the Secretary the sums of $1,825,000 in the fiscal year ending September 30, 1984, $820,000 in the fiscal year ending September 30, 1985, and $785,000 for the fiscal year ending September 30, 1986, such sums to remain available until expended.

SEC. 315. (a) Bank protection activities conducted under the Rio Grande Bank protection project pursuant to the Act of April 25, 1945 (59 Stat. 89), may be undertaken in Starr County, Texas, notwithstanding any provision of such Act establishing the counties in which such bank protection activities may be undertaken.

(b) Any bank protection activity undertaken in Starr County, Texas, pursuant to subsection (a) of this section shall be—

(1) in accordance with such specifications as may be prepared for such purpose by the International Boundary and Water Commission, United States and Mexico; and

(2) except as provided in subsection (a) of this section, subject to the terms and conditions generally applicable to activities conducted under the Rio Grande Bank protection project.

TITLE IV—DAM SAFETY

SEC. 401. (a) Section 1 of Public Law 92-367 (86 Stat. 506) is amended by replacing the final period with a comma and inserting the following after the comma: "unless such barrier, due to its location or other physical characteristics is likely to pose a significant threat to human life or property in the event of its failure."

(b) Public Law 92-367 is further amended by inserting after Section the following Sections:

"SEC. 7. There is authorized to be appropriated to the Secretary of the Army, acting through the Chief of Engineers (hereafter in this Act referred to as the 'Secretary'), $15,000,000 for each of the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987. Sums appropriated under this section shall be distributed annually among those States on the following basis: One-third equally among those States that have established dam safety programs approved under the terms of section 8 of this Act, and two-thirds in proportion to the number of dams located in each State that has an established dam safety program under the terms of section 8 of this Act to the number of dams in all States with such approved programs. In no event shall funds distributed to any State under this section exceed 50 per centum of the reasonable cost of implementing an approved dam safety program in such State.

"SEC. 8. (a) In order to encourage the establishment and maintenance of effective programs intended to assure dam safety to protect human life and property, the Secretary shall provide assistance under the terms of section 7 of this Act to any State that establishes and maintains a dam safety program which is approved under this section. In evaluating a State's dam safety program, under the terms of subsections (b) and (c) of this section, the Secretary shall determine that such program includes the following:

"(1) a procedure, whereby, prior to any construction, the plans for any dam will be reviewed to provide reasonable assurance of the safety and integrity of such dam over its intended life;

"(2) a procedure to determine, during and following construction and prior to operation of each dam built in the State, that

such dam has been conducted and will be operated in a safe and reasonable manner;

"(3) a procedure to inspect every dam within such State at least once every three years;

"(4) a procedure for more detailed and frequent safety inspections, if warranted;

"(5) the State has or can be expected to have authority to require those changes or modifications in a dam, or its operation, necessary to assure the dam's safety;

"(6) the State has or can be expected to develop a system of emergency procedures that would be utilized in the event a dam fails or for which failure is imminent together with an identification for those dams where failure could be reasonably expected to endanger human life, of the maximum area that could be inundated in the event of the failure of such dam, as well as identification of those necessary public facilities that would be affected by such inundation;

"(7) the State has or can be expected to have the authority to assure that any repairs or other changes needed to maintain the integrity of any dam will be undertaken by the dam's owner, or other responsible party; and

"(8) the State has or can be expected to have authority and necessary emergency funds to make immediate repairs or other changes to, or removal of, a dam in order to protect human life and property, and if the owner does not take action, to take appropriate action as expeditiously as possible.

"(b) Any program which is submitted to the Secretary under the authority of this section shall be deemed approved one hundred and twenty days following its receipt by the Secretary unless the Secretary determines that such program fails to reasonably meet the requirements of subsection (a) of this section. If the Secretary determines such a program cannot be approved, he shall immediately notify such State in writing, together with his reasons and those changes needed to anable such plan to be approved.

"(c) Utilizing the expertise of the Board established under section 11 of this Act, the Secretary shall review periodically the implementation and effectiveness of approved State dam safety programs. In the event the Board finds that a State program under this Act has proven inadequate to reasonably protect human life and property, and the Secretary agrees, the Secretary shall revoke approval of such State program and withhold assistance under the terms of section 7 of this Act until such State program has been reapproved.

SEC. 9. Not later than eighteen months after enactment of the Dam Safety Act of 1983, the Director of the Federal Emergency Management Agency shall report to the Congress on the need for and possible effects of a federally sponsored program of reinsurance or guarantees of insurance for owners of dams. This report shall include information on a variety of possible Federal reinsurance or guarantees programs and their cost, possible effects such a program or programs might have on the private reinsurance business, and the number of dam owners possibly affected by such a program.

"SEC. 10. (a) There is authorized to be established a Federal Dam Safety Review Board (hereinafter in this Act referred to as the 'Board'), which shall be responsible for reviewing the procedures and standards utilized in the design and safety anaylsis of dams constructed and operated under authority of the United States, and to monitor State implementation of this Act. The Board is authorized to hire necessary staff and shall review as expeditiously as possible the plans and specifications on all dams specifically authorized by Congress prior to initiation of construction of such dam, and file an advisory report on the safety of such dam with the appropriate agency, the appropriate State, and the Congress. The Board is authorized to utilize the expertise of other agencies of the United States and to enter contracts for necessary studies to carry out the requirements for this section. There is authorized to be appropriated to the Board such sums as may be necessary to carry out this section.

(b) The Board shall also study the need for a Federal loan program to assist the owners of non-Federal dams in rehabilitating such structures for safety deficiencies. This study shall include a quantitative assessment of the availability of funds from existing Federal programs and all other sources for dam rehabilitation, a quantitative assessment of the need for such funds, and an analysis of any impediments which are found to the utilization of existing Federal sources of funds for this purpose.

"(c) The Board shall consist of ten members selected for their expertise in dam safety, including one representative each from the Department of the Army, the Department of the Interior, the Tennessee Valley Authority, The Federal Emergency Management Agency, and the Department of Agriculture, plus four members, appointed by the President for periods of four years, on a rotating basis, who are not employees of the United States. At least two members of the Board shall be employees of the States having an approved program under section 8 of this Act. The Chairman of the Board shall be selected from among those members who are not employees of the United States.

"SEC. 11. The head of any agency of the United States that owns or operates a dam, or proposes to construct a dam in any State, shall, when requested by such State, consult fully with such State on the design and safety of such dam and allow officials to such State to participate with officials of such agency in all safety inspections of such dam.

"SEC. 12. The Secretary shall, at the request of any State that has or intends to develop a dam safety program under section 8 of this Act, provide training for State dam safety inspectors. There is authorized to be appropriated to carry out this section $1,000,000 for the fiscal year ending September 30, 1984, and $500,000 during each of fiscal years ending September 30, 1985, through September 30, 1987.

"SEC. 13. The Secretary, in cooperation with the National Bureau of Standards, shall undertake a program of research in order to develop improved techniques and equipment for rapid and effective dam inspection, together with devices for the continued monitoring of dams for safety purposes. The Secretary shall provide for State participation in such research and periodically advise all States of the results of such research. There is authorized to be appropriated to carry out this section $1,000,000 for each of the fiscal years ending September 30, 1984, through September 30, 1987.

"SEC. 14. The Secretary is authorized to maintain and periodically publish updated information on the inventory of dams authorized in section 5 of this Act. For the purpose of carrying out this section, there is authorized to be appropriated to the Secretary $500,000 for each of the fiscal years ending September 30, 1984, through September 30, 1987."

SEC. 402. Any report that is submitted to the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives by the Secretary of the Army, acting through the Chief of Engineers, or the Secretary of Agriculture, acting under Public Law 83-566, as amended, which proposes construction of a water impoundment facility, shall include information on the consequences of failure and geologic or design factors which could contribute to the possible failure of such facility.

SHORT TITLE

SEC. 403. This title shall be known as the "Dam Safety Act of 1983".

TITLE V—INLAND NAVIGATION

SEC. 501. Notwithstanding any other provision of law, the Secretary shall not obligate more than $500,000,000 for construction, rehabilitation, renovation, operations, and maintenance on the inland waterways of the United States in any of the fiscal years ending September 30, 1985, through September 30, 1999.

SEC. 502. (a) In addition to sums available annually under the terms of section 501 of this title, and subject to the provisions of section 503 of this title, the Secretary is authorized to impose, collect, and expend use charges and tolls on the commercial users of the inland waterways of the United States to the degree necessary for the construction, rehabilitation, renovation, operations, and maintenance of a system of inland waterways so that such waterways are sufficient to meet the needs of the commercial waterway users.

(b) For the purpose of this title, the term "inland waterways of the United States" means those waterways authorized to be constructed or maintained by the Secretary to depths of twelve feet or less.

SEC. 503. There is hereby established an Inland Waterway Users Board (hereinafter referred to as the "Users Board") composed of twenty-one members selected by the Secretary in order to represent a spectrum of users and shippers utilizing the various inland waterways of the United States for commercial purposes.

(b) The Users Board shall meet at least annually to develop and make recommendations to the Secretary for spending levels on the inland waterways of the United States for the following fiscal year. The Secretary shall not obligate funds under this Act in excess of the levels recommended by the Users Board.

SEC. 504. Section 4 of the Act of July 5, 1884 (23 Stat. 147), as amended by the Act of March 3, 1909 (33 U.S.C. 5), is hereby amended to read as follows:

"SEC. 4. The Secretary of the Army, acting through the Chief of Engineers, is authorized to operate, maintain, and keep in repair and rehabilitate any project for the benefit of navigation belonging to the United States or that may be hereafter acquired or constructed: *Provided*, That whenever, in the judgment of the Secretary of the Army, the condition of any of the aforesaid works is such that its reconstruction or replacement is essential to efficient and economical maintenance and operation, as herein provided for, and if the cost shall be less than $25,000,000, the Secretary may proceed with such work: *Provided further*, That the project does not increase the scope or change the location of an existing project: *And pro-*

vided further, That nothing herein contained shall be held to apply to the Panama Canal.".

SEC. 505. The following works of improvement to the inland waterways of the United States are hereby adopted and authorized to be prosecuted by the Secretary in accordance with the plans and subject to the conditions recommended in the respective reports hereinafter designated:

(1) Helena Harbor, Phillips County, Arkansas: Report of the Chief of Engineers dated October 17, 1980, at a Federal cost of $42,000,000 (October 1982);

(2) White River Navigation to Batesville, Arkansas: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $20,500,000 (October 1982);

(3) Lake Pontchartrain, North Shore, Louisiana: Report of the Chief of Engineers dated February 14, 1979 at a Federal cost of $850,000 (October 1982);

(4) Greenville Harbor, Mississippi: Reports of the Chief of Engineers dated November 15, 1977, and February 22, 1982, at a Federal cost of $27,700,000 (October 1982);

(5) Vicksburg Harbor, Mississippi: Report of the Chief of Engineers dated August 13, 1979, at a Federal cost of $54,700,000 (October 1982);

(6) Atlantic Intracoastal Waterway Bridges, North Carolina: Report of the Chief of Engineers dated October 1, 1975, at a Federal cost of $8,000,000 (October 1982);

(7) Olcott Harbor, New York: Report of the Chief of Engineers dated June 11, 1980, at a Federal cost of $5,320,000 (October 1982);

(8) Bonneville Lock and Dam, Oregon and Washington-Columbia River and Tributaries Interim Report: Reports of the Chief of Engineers dated March 14, 1980, and February 10, 1981, at a Federal cost of $177,000,000 (October 1982);

(9) Memphis Harbor, Memphis, Tennessee: Report of the Chief of Engineers dated February 25, 1981, at a Federal cost of $43,000,000 (October 1982);

(10) Gallipolis Locks and Dam Replacement, Ohio River, Ohio and West Virginia: Report of the Chief of Engineers dated April 8, 1982, at a Federal cost of $313,000,000 (October 1982);

SEC. 506. The Secretary is authorized to maintain and rehabilitate the New York State Barge Canal: *Provided, however,* That the State of New York shall provide one-half of the annual costs to operate, maintain, and rehabilitate the canal: *And provided, further,* That control and operation of the canal shall continue to reside with the State of New York.

(b) For the purposes of this Act, the New York State Barge Canal is defined to be—

(i) the Erie Canal, which connects the Hudson River at Waterford with the Niagara River at Tonawanda;

(ii) the Oswego Canal, which connects the Erie Canal at Three Rivers with Lake Ontario at Oswego;

(iii) the Champlain Canal, which connects the easterly end of the Erie Canal at Waterford with Lake Champlain at Whitehall; and

(iv) the Cayuga and Seneca Canals, which connect the Erie Canal at a point near Montezuma with Cayuga and Seneca Lakes and through Cayuga Lake and Ithaca and through Seneca Lake with Montour Falls.

SEC. 507. (a) To ensure the coordinated development and enhancement of the Upper Mississippi River System, the Congress declares that the purpose of this section is to recognize such System as a nationally significant ecosystem and a nationally significant commercial navigation system. The Congress further recognizes that such System provides a diversity of opportunities and experiences. Such System shall be administered and regulated in recognition of its several purposes.

(b) For purposes of this section—

(1) the term "Master Plan" means the Comprehensive Master Plan for the Management of the Upper Mississippi River System, dated January 1, 1982, prepared by the Upper Mississippi River Basin Commission and submitted to the Congress pursuant to the Act entitled "An Act to amend the Internal Revenue Code of 1954 to provide that income from the conducting of certain bingo games by certain tax-exempt organizations will not be subject to tax, and for other purposes", approved October 21, 1978 (92 Stat. 1693; Public Law 95-502), hereafter in this Act referred to as the "Act of October 21, 1978"; and

(2) the terms "Upper Mississippi River System" and "System" mean those river reaches having commercial navigation channels on the following rivers: the Mississippi River main stem north of Cairo, Illinois; the Minnesota River, Minnesota; the Black River, Wisconsin; the Saint Croix River, Minnesota and Wisconsin; the Illinois River and Waterway, Illinois; and the Kaskaskia River, Illinois.

(c)(1) The Congress hereby approves the Master Plan as a guide for future water policy on the Upper Mississippi River System. Such approval shall not constitute authorization of any recommendation contained in the Master Plan.

(2) Section 101 of the Act of October 21, 1978 is amended by striking out the last two sentences of subsection (b) and the last sentence of subsection (j).

(d)(1) The Congress hereby gives its consent to the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, or any two or more of such States, to enter into agreements, not in conflict with any law of the United States, for cooperative effort and mutual assistance in the comprehensive planning for the use, protection, growth, and development of the Upper Mississippi River System, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements.

(2) Each officer or employee of the United States responsible for management of any part of the System is authorized in accordance with such officer's or employee's legal authority to assist and participate, when requested by any agency established under paragraph (1) of this subsection, in programs or deliberations of such agency.

(e)(1) The Secretary is authorized to provide for the engineering, design, and construction, at an estimated cost of $200,000,000, of a second lock at locks and dam 26, Mississippi River, Alton, Illinois and Missouri. Such second lock shall be 110 feet by 600 feet and shall be constructed at or in the vicinity of the location of the replacement lock authorized by section 102 of the Act of October 21, 1978.

(2) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection.

(f)(1) The Secretary, acting in consultation with the Secretary of Transportation and the States in the System, shall monitor traffic movements on the System for the purpose of verifying lock capacity, updating traffic projections, and refining the economic evaluations so as to verify the need for future capacity expansion of the System as well as the future need for river rehabilitation and environmental enhancement.

(2) There are authorized to be appropriated to the Secretary for the first fiscal year beginning after the date of enactment of this Act, and for each of nine fiscal years following thereafter, such sums as may be necessary to carry out paragraph (1) of this subsection.

(g)(1) The Secretary of the Interior, in concert with any appropriate State agency, is authorized to undertake with respect to the Upper Mississippi River System, substantially in accordance with the recommendations of the Master Plan——

(A) a habitat rehabilitation and enhancement program to plan, construct, and evaluate projects to protect, enhance, or rehabilitate aquatic and terrestrial habitats lost or threatened as a result of man-induced activities or natural factors;

(B) the implementation of a long-term resource monitoring program; and

(C) the implementation of a computerized inventory and analysis system.

(2) For the purposes of carrying out subparagraph (g)(1)(A) of this subsection, there are authorized to be appropriated to the Secretary of the Interior not to exceed $8,200,000 for the first fiscal year beginning after the date of enactment of this Act, not to exceed $12,400,000 for the second fiscal year beginning after the date of enactment of this act, and not to exceed $13,000,000 for each of the succeeding eight fiscal years.

(3) For purposes of carrying out subparagraph (g)(1)(B) of this subsection, there are authorized to be appropriated to the Secretary of the Interior not to exceed $7,680,000 for the first fiscal year beginning after the date of enactment of this Act and not to exceed $5,080,000 for each of the succeeding nine fiscal years.

(A) not to exceed $40,000 for the first fiscal year beginning after the date of enactment of this Act;

(B) not to exceed $280,000 for the second fiscal year beginning after the date of enactment of this Act;

(C) not to exceed $1,220,000 for the third fiscal year beginning after the date of enactment of this Act; and

(D) not to exceed $775,000 for each of the succeeding seven fiscal years.

(h)(1) The Secretary of the Interior, in consultation with the Secretary and working through an agency, if any, established by the States for management of the System under subsection (d) of this section, is authorized to implement a program of recreational projects for the System and to conduct an assessment of the economic benefits generated by recreational activities in the System.

(2) For purposes of carrying out the program of recreational projects authorized in paragraph (1) of this subsection, there are authorized to be appropriated to the Secretary of the Interior not to exceed $500,000 for each of the first ten fiscal years beginning after the date of enactment of this Act and, for purposes of carrying out the assessment of the economic benefits of recreational activities as authorized in paragraph (1) of this subsection, there are authorized to be appropriated to the Secretary of the Interior not to exceed $300,000 for the first and second fiscal years and $150,000 for the third fiscal year beginning after the computerized inventory and analysis system implemented pursuant to subsection (g)(1)(C) of this section is fully functional.

(i)(1) The Congress finds that there has been reasonable compliance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in the formulation of the Master Plan and the environmental impact statement on construction of the first lock at locks and dam 26, Mississippi River, Alton, Illinois and Missouri.

(2) The actions authorized in subsection (e) of this section are exempt from the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(j) None of the funds appropriated pursuant to the authorization contained in subsections (g) and (h) of this section shall be considered to be attributable to navigation.

(k) This section may be cited as the "Upper Mississippi River System Management Act."

TITLE VI—COST SHARING

SEC. 601. (a) The construction of any water resource project or related land resources project authorized in this Act or after the date of enactment of this Act, excluding any project for the purposes of navigation, shall be initiated only after the appropriate Federal agency has entered into an agreement with a non-Federal project sponsor to share the costs of construction in accordance with the following guidelines, and agrees to pay, upon completion of project construction, 100 per centum of operation, maintenance, and rehabilitation costs:

(1) hydroelectric power, publicly financed: not less than 10 per centum;

(2) hydroelectric power, privately financed: a negotiated payment for the right to use a Federal facility or a partnership arrangement, but not less than 100 per centum of the costs associated with such right or arrangement;

(3) municipal and industrial water: 100 per centum;

(4) recreation: 50 per centum of joint and seperable costs;

(5) beach erosion control; not less than 50 per centum for publically owned shores and not less than 100 per centum for privately owned shores within project limits;

(6) fish and wildlife mitigation: not less than 35 per centum, to be allocated in proportion to project costs;

(7) fish and wildlife enhancement: not less than 35 per centum;

(8) urban and rural flood protection, rural drainage, or agricultural water supplies: not less than 35 per centum, or, for projects covered by section 3 of the Flood Control Act of 1936, as amended, the value of lands easements, right-of-way and relocations required for project construction, whichever is greater, subject to an ability to pay determination under section 603 of this title.

(b) Any cost-sharing agreement for the construction of any water or related land resources project involving two or more purposes may provide for an allocation of costs to each purpose which is greater or lesser than the actual costs associated with each purpose, but the total non-Federal contribution for any such multipurpose project shall equal the amount determined by adding together the cost-sharing and repayment requirements calculated under this section for each purpose separately.

SEC. 602. (a) Payment in kind may be accepted for any non-Federal contribution under this Act, except that not less than 5 per centum of the cost of any urban or rural flood protection project substantially involving structural works shall be paid in cash by the non-Federal project sponsor during construction of such project.

(b) To the extent that urban and rural flood protection benefits are provided by nonstructural measures, a cash contribution shall not be required of non-Federal project sponsors.

(c) The appropriate Federal agency may permit the full non-Federal contribution to be made, without, interest, during construction of the project or, with interest, over a period not to exceed thirty years from the date of project completion.

(d) Any repayment by any non-Federal sponsor under this section shall include—

(i) the applicable rate of interest, if any, authorized by law for the project, or

(ii) when no other rate is provided by law, the rate of interest determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which funds for the construction of the project are first disbursed.

(e) At the request of any non-Federal private or public sponsor the appropriate Federal agency may permit such non-Federal sponsor to delay the initial payment of any non-Federal contribution under this Act for up to one year after the date when construction is begun on the project for which such contribution is to be made.

SEC. 603. Any cost-sharing agreement under this Act with a non-Federal private or public sponsor of an urban and rural flood protection, rural drainage, or agricultural water supply project shall be consistent with the ability of any such non-Federal sponsor to pay. The ability of any non-Federal sponsor to pay shall be determined by the appropriate Federal agency in accordance with any applicable law or, in the absence of applicable law, under procedure to be determined by the appropriate agency.

SEC. 604. No additional cost sharing or repayment shall be required from any non-Federal sponsor for any water or related land resources project authorized prior to the date of enactment of this Act beyond any applicable cost-sharing and repayment requirements of existing law, but construction shall not be initiated prior to the fiscal year ending September 30, 1994, on any such project or separable element thereof unless—

(a) a non-Federal sponsor agrees to pay any cost-sharing and repayment requirements associated with such project under existing law and 50 per centum of any additional cost-sharing or repayment contributions associated with such project under section 601 of this title; or

(b) such project is an uncompleted unit (or reformulation of such unit) of a comprehensive river basin program of development to be located in a State in which large acreages of land or volumes of water have been dedicated to such program for the benefit of citizens in other States and thereby denied to the use of the citizens of such State.

In determining priorities for development among projects authorized for development prior to the date of enactment of this Act, the appropriate Federal agencies shall consult with the States in which such projects are to be located and shall consider any priorities established by any State for the development of such projects.

TITLE VII

The following works of improvement of rivers and harbors and other waterways for flood control and other purposes are hereby adopted and authorized to be prosecuted by the Secretary in accordance with the plans and subject to the conditions recommended in the respective reports hereinafter designated:

(a) FLOOD CONTROL.—

(1) Village Creek, Jefferson County, Alabama: Report of the Chief of Engineers dated December 23, 1982, at a Federal cost of $20,700,000 (October 1982);

(2) Eight Mile Creek, Paragould, Arkansas: Report of the Chief of Engineers dated August 10, 1979, at a Federal cost of $14,500,000 (October 1982);

(3) Fourche Bayou Basin, Little Rock, Arkansas: Report of the Chief of Engineers dated September 4, 1981, at a Federal cost of $19,700,000 (October 1982);

(4) Helena and vicinity, Arkansas: Report of the Chief of Engineers dated June 23, 1983, at a Federal cost of $11,600,000 (October 1982);

(5) Little Colorado River at Holbrook, Arizona: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $7,730,000 (October 1982);

(6) Cache Creek Basin, California: Report of the Chief of Engineers dated April 27, 1981, at a Federal cost of $21,100,000 (October 1982);

(7) Redbank and Fancher Creeks, California: Report of the Chief of Engineers dated May 7, 1981, at a Federal cost of $57,200,000 (October 1982);

(8) Santa Ana River Mainstem, including Santiago Creek, California: Report of the Chief of Engineers dated January 15, 1982, at a Federal cost of $1,180,000 (October 1982): *Provided*, That construction is restricted to the following elements of the project: improvements at Prado Dam which limit the reservoir taking line to no greater than an elevation of 566 feet; Santa Ana River Channel improvements in Orange County; improvements along Santiago Creek; improvements of the Oak Street Drain; and improvement of the Mill Creek levees; features for mitigation of project effects and preservation of endangered species, and recreation features identified in the Chief of Engineers' Report for these project elements;

(9) Fountain Creek, Pueblo, Colorado, Phase I GDM: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $6,600,000 (October 1982);

(10) Metropolitan Denver and South Platte River and Tributaries, Colorado, Wyoming, and Nebraska: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $9,080,000 (October 1982);

(11) Oates Creek, Georgia: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $8,360,000 (October 1982);

(12) Agana River, Guam: Report of the Chief of Engineers dated March 14, 1977, at a Federal cost of $5,820,000 (October 1982);

(13) Big Wood River and Tributaries, Idaho, Interim Report—Little Wood River, Vicinity of Gooding and Shoshone, Idaho: Report of the Chief of Engineers dated November 2, 1977, at a Federal cost of $3,750,000 (October 1982);

(14) Rock River at Rockford and Vicinity, Illinois, Loves Park Interim: Report of the Chief of Engineers dated September 15, 1980, at a Federal cost of $22,800,000 (October 1982);

(15) Halstead, Kansas: Report of the Chief of Engineers dated May 8, 1979, at a Federal cost of $6,130,000 (October 1982);

(16) Atchafalaya Basin Floodway system, Louisiana: Report of the Chief of Engineers dated February 28, 1983, at a Federal cost of $195,000,000 (October 1982);

(17) Bushley Bayou, Louisiana, Phase I GDM: Reports of the Chief of Engineers dated April 30, 1980, and August 12, 1982, at a Federal cost of $42,800,000 (October 1982);

(18) Louisiana State Penitentiary Levee, Mississippi River: Report of the Chief of Engineers dated December 10, 1982, at a Federal cost of $20,500,000 (October 1982);

(19) Quincy Coastal Streams, Massachusetts, Town Brook Interim: Report of the Chief of Engineers dated December 14, 1981, at a Federal cost of $25,100,000 (October 1982);

(20) Mississippi River at St. Paul, Minnesota: Report of the Chief of Engineers dated June 16, 1983, at a Federal cost of $7,200,000 (October 1982);

(21) Redwood River at Marshall, Minnesota: Report of the Chief of Engineers dated November 16, 1981, at a Federal cost of $3,130,000 (October 1982);

(22) Root River Basin, Minnesota: Report of the Chief of Engineers dated May 13, 1977, at a Federal cost of $8,150,000 (October 1982);

(23) South Fork Zumbro River Watershed at Rochester, Minnesota: Report of the Chief of Engineers dated February 23, 1979, at a Fedaral cost of $77,800,000 (October 1982);

(24) Horn Lake Creek and Tributaries, Including Cow Pen Creek, Tennessee and Mississippi: Report of the Chief of Engineers dated January 4, 1983, at a Federal cost of $2,450,000 (October 1982);

(25) Robinson's Branch of the Rahway River at Clark, Scotch Plains, and Rahway, New Jersey: Report of the Chief of Engineers dated October 10, 1975, at a Federal cost of $13,500,000 (October 1982);

(26) Rahway River and Van Winkles Brook at Springfield, New Jersey: Report of the Chief of Engineers dated October 24, 1975, at a Federal cost of $12,300,000 (October 1982);

(27) Green Brook Subbasin, Raritan River Basin, New Jersey: Report of the Chief of Engineers dated September 4, 1981, at a Federal cost of $72,900,000 (October 1982);

(28) Middle Rio Grande Flood Protection, Bernalillo to Belen, New Mexico; Report of the Chief of Engineers dated June 23, 1981, at a Federal cost of $39,200,000 (October 1982): *Provided*, That the Secretary is authorized to increase flood protection through the dredging of the bed of the Rio Grande in the vicinity of Albuquerque, New Mexico, to an elevation lower than existed on the date of enactment of this Act;

(29) Puerco River and Tributaries, Gallup, New Mexico: Report of the Chief of Engineers dated September 4, 1981, at a Federal cost of $3,220,000 (October 1982);

(30) Cazenovia Creek Watershed New York: Report of the Chief of Engineers dated September 8, 1977, at a Federal cost of $1,910,000 (October 1982);

(31) Mamaroneck and Sheldrake Rivers Basin and Byram River Basin, New York and Connecticut: Report of the Chief of Engineers dated April 4, 1979, at a Federal cost of $44,100,000 (October 1982);

(32) Hocking River at Logan and Nelsonville, Ohio: Report of the Chief of Engineers dated June 23, 1978, at a Federal cost of $6,180,000 for Logan and $6,460,000 for Nelsonville (October 1982);

(33) Miami River, Fairfield, Ohio: Report of the Chief of Engineers dated June 22, 1983, at a Federal cost of $200,000 (October 1982);

(34) Miami River, Little Miami River, Interim Report Number Two, West Carrollton, Holes Creek, Ohio: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $5,950,000 (October 1982);

(35) Muskingum River Basin, Ohio: Report of the Chief of Engineers dated February 3, 1978, at a Federal cost of $3,500,000 for Mansfield and $6,420,000 for Killbuck (October 1982);

(36) Scioto River at North Chillicothe, Ohio: Report of the Chief of Engineers dated September 4, 1981, at a Federal cost of $9,070,000 (October 1982);

(37) Mingo Creek, Tulsa, Oklahoma: Report of the Chief of Engineers dated November 16, 1981, at a Federal cost of $87,800,000 (October 1982);

(38) Parker Lake, Muddy Boggy Creek, Oklahoma: Report of the Chief of Engineers dated May 30, 1980, at a Federal cost of $43,800,000 (October 1982);

(39) Harrisburg, Pennsylvania, Phase I GDM: Report of the Chief of Engineers dated May 16, 1979, at a Federal cost of $102,000,000 (October 1982);

(40) Lock Haven, Pennsylvania, Phase I GDM: Report of the Chief of Engineers dated December 14, 1981, at a Federal cost of $65,500,000 (October 1982);

(41) Saw Mill Run, Pittsburgh, Pennsylvania: Report of the Chief of Engineers dated January 30, 1978, at a Federal cost of $7,020,000 (October 1982);

(42) Big River Reservoir, Rhode Island: Report of the Chief of Engineers dated March 9, 1983, at a Federal cost of $40,900,000 (October 1982);

(43) Nonconnah Creek, Tennessee and Mississippi: Report of the Chief of Engineers dated December 23, 1982, at a Federal cost of $19,200,000 (October 1982);

(44) Buffalo Bayou and Tributaries, Texas: Report of the Chief of Engineers dated June 13, 1978, at a Federal cost of $75,000,000 (October 1982);

(45) Boggy Creek, Austin, Texas: Report of the Chief of Engineers dated January 19, 1981, at a Federal cost of $13,800,000 (October 1982);

(46) Lake Wichita, Holliday Creek, Texas: Report of the Chief of Engineers dated July 9, 1979, at a Federal cost of $14,900,000 (October 1982);

(47) James River Basin, Richmond, Virginia, Phase I GDM; Report of the Chief of Engineers dated November 16, 1981, at a Federal cost of $79,600,000 (October 1982);

(48) Chehalis River at South Aberdeen and Cosmopolis, Washington: Report of the Chief of Engineers dated February 8, 1977, at a Federal cost of $19,300,00 (October 1982); and

(49) Yakima Union Gap, Washington: Report of the Chief of Engineers dated May 7, 1980, at a Federal cost of $8,640,000 (October 1982).

(b) HYDROPOWER DEVELOPMENT.—

(1) South Central Railbelt Area, Alaska, Hydroelectric Power, Valdez and Copper River Basin: Report of the Chief of Engineers dated October 29, 1982, at a Federal cost of $40,500,000 (October 1982);

(2) Murray Lock and Dam, Hydropower, Arkansas: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $92,900,000 (October 1982);

(3) Metropolitan Atlanta Area Water Resources Management Study, Georgia: Report of the Chief of Engineers dated June 1, 1982, at a Federal cost of $24,500,000 (October 1982);

(4) Lucky Peak Dam and Lake, Idaho, Modification Study: Report of the Chief of Engineers dated March 17, 1980, at a Federal cost of $98,700,000 (October 1982);

(5) W. D. Mayo Lock and Dam 14, Hydropower, Oklahoma: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $112,100,000 (October 1982);

(6) McNary Lock and Dam Second Powerhouse, Columbia River, Oregon and Washington, Phase I GDM; Report of the Chief of Engineers dated June 24, 1981, at a Federal cost of $600,000,000 (October 1982); and

(7) Gregory County Hydroelectric Pumped Storage Facility, Stages I and II, South Dakota: Report of the Chief of Engineers dated April 26, 1983, together with such additional associated multipurpose water supply and irrigation features as are generally described in the final feasibility report of the District Engineer, at a Federal, cost of $1,280,000,000, not to exceed $100,000,000 of which may be used to construct such associated water supply and irrigation features. Notwithstanding any other provision of law, the Corps of Engineers and the Western Area Power Administration shall cooperate in the construction and operation of the project, and the marketing of project output, in accordance with terms and conditions agreeable to the State of South Dakota.

(c)(1) SHORELINE PROTECTION.—

(A) Charlotte County, Florida: Report of the Chief of Engineers dated April 2, 1982, at a Federal cost of $1,440,000 (October 1982);

(B) Indian River County, Florida; Report of the Chief of Engineers dated December 21, 1981, at a Federal cost of $2,300,000 (October 1982);

(C) Panama City Beaches, Florida: Report of the Chief of Engineers dated July 8, 1977, at a Federal cost of $26,200,000 (October 1982);

(D) Saint Johns County, Florida: Report of the Chief of Engineers dated February 26, 1980, at a Federal cost of $7,660,000 (October 1982);

(E) Jekyll Island, Georgia: Report of the Chief of Engineers dated March 3, 1976, at a Federal cost of $5,870,000 (October 1982);

(F) Atlantic Coast of Maryland and Assateague Island, Virginia: Report of the Chief of Engineers dated September 29, 1981, at a Federal cost of $21,000,000 (October 1982);

(G) Atlantic Coast of New York City from Rockaway Inlet to Norton Point, New York: Report of the Chief of Engineers dated August 18, 1976, at a Federal cost of $2,970,000 (October 1982);

(H) Presque Isle Peninsula, Erie, Pennsylvania: Report of the Chief of Engineers dated October 2, 1981, at a Federal cost of $17,200,000 (October 1982); and

(I) Folly Beach, South Carolina: Report of the Chief of Engineers dated March 17, 1981, at a Federal cost of $1,110,000 (October 1982).

(2) Construction of the projects authorized in this subsection shall be subject to determinations of the Secretary, after consultation with the Secretary of the Interior, that the construction will be in compliance with the Coastal Barrier Resources Act (Public Law 97-348).

(d) MITIGATION.—

(1) Fish and Wildlife Program for the Sacramento River Bank Protection Project, California, First Phase: Report of the Chief of Engineers dated September 1, 1981, at a Federal cost of $2,030,000 (October 1982);

(2) Richard B. Russell Dam and Lake, Savannah River, Georgia and South Carolina, Fish and Wildlife Mitigation Report: Report of the Chief of Engineers dated May 11,

1982, at a Federal cost of $18,700,000 (October 1982);

(3) West Kentucky Tributaries Projects, Fish and Wildlife Mitigation Plan, Obion Creek, Kentucky: Report of the Chief of Engineers dated September 16, 1980, at a Federal cost of $3,980,000 (October 1982);

(4) Cape May Inlet to Lower Township, New Jersey, Phase I GDM: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $15,600,000 (October 1982); and

(5) Cooper Lake and Channels Project, Texas, Report on Fish and Wildlife Mitigation: Report of the Chief of Engineers dated May 21, 1982, at a Federal cost of $7,570,000 (October 1982).

(e) DEMONSTRATION.—

(1) Cabin Creek, West Virginia, Demonstration Reclamation Project: Report of the Chief of Engineers dated March 1, 1979, at a Federal cost of $32,800,000 (October 1982);

(2) Lava Flow Control, Island of Hawaii, Hawaii: Report of the Chief of Engineers dated July 21, 1981, at a Federal cost of $3,950,000 (October 1982);

(3) San Francisco Harbor, California, Fisherman's Wharf Area: Reports of the Chief of Engineers dated February 3, 1978, and June 7, 1979, at a Federal cost of $13,500,000 (October 1982).

SECTION-BY-SECTION ANALYSIS WATER RESOURCES DEVELOPMENT ACT OF 1983

TITLE I

This title provides for monetary spending ceilings on the construction budget accounts of the Corps of Engineers, and ensures that these ceilings do not impair Corps contracting authority or limit obligations for reimbursable activity performed for other agencies.

TITLE II. GENERAL PROVISIONS

Section 201. provides that where a flood protection project yields increases in land value to a single owner to such an extent that the owner receives 10% or more of the project benefits, the Secretary of the Army will enter agreement for repayment of half of the project costs allocated to the owners benefits. The section provides further that the Corps will include data on such beneficiaries in future studies.

Section 202. requires that the Agriculture Department's Soil Conservation Service project reports include data on all public recreation facilities in the project area, and the impact of the project on these areas.

Section 203. provides new deauthorization procedures for Corps projects. Any project which has not received appropriations in the last ten years would be automatically deauthorized unless the Secretary of the Army determines, in consultation with affected state governors, that the project should remain authorized. This procedure becomes effective one year after the date of enactment.

Section 204. provides for the deauthorization of Corps studies which have not received funds for 4 years and requires that the Secretary of the Army submit to the Congress a list of all affected studies.

Section 205. provides that new Soil Conservation Services Projects with costs in excess of $10 M can be authorized only by act of Congress.

Section 206. requires that SCS projects must have at least 20% agriculture-related benefits.

Section 207. requires the Secretary of Agriculture to report to the Congress on the advisibility of opening to the public all impoundments with recreation potential which have been built under the SCS program.

Section 208. defines single purpose municipal and industrial water supply, including rehabilitation of distribution systems, as a legitimate federal purpose for project development.

Section 209. Authorizes the Secretary to enable district engineers to certify that local improvements for flood control are compatible with a project under study so that local interests may go forward with the understanding that such improvements are likely to be a part of a Federal project under study, both for benefit/cost assessment and cost-sharing assessments.

Section 210. Authorizes the Secretary to undertake a program to assist local communities in the control of river ice which creates a flood hazard and directs him to report to the Congress by March 1, 1987 on the program. $5 million annually is authorized to be appropriated for the program between FY 1984-1988.

Section 211. Authorizes the Secretary to provide technical assistance for rehabilitation of millraces and similar existing facilities constructed for use as hydroelectric facilities, and authorizes $5 million annually for such assistance between FY 1984-1988.

Section 212. Amends the Flood Control Act of 1970 to ensure that when agreements under the act are made with a State, such agreements may be made reflecting that they do not obligate future State legislatures where such obligation is inconsistent with State constitutions.

Section 213. Requires that the Chief of Engineers report favorably on any project newly authorized in this Act before such project may be initiated.

Section 214. Sets a ceiling on the Federal costs of the projects authorized in this act.

Section 215. Mandates that the Secretary of the Army shall not require non-Federal interests to assume maintenance of recreation facilities as a condition for the construction of such facilities.

Section 216. Permits the creation of Federal Project Repayment Districts in accordance with State law for the purpose of contracting with the Secretary of the Army for the recovery of the appropriate share of project costs. Such districts would have the authority to collect a portion of the transfer price from any transaction involving the sale, transfer, or change in beneficial ownership of lands and improvements within the district boundary.

TITLE III. PROJECT RELATED PROVISIONS

Section 301. authorizes three bank erosion control measures for construction and mandates that projects authorized prior to this act for similar purposes be given priority consideration in the allocation of funds. These measures are at Moundville and Fort Toulouse, Alabama, and Tangier Island, Virginia.

Section 302. Secretary is authorized and directed to relocate the Delaware River dredge disposal site.

Section 303. authorizes construction of emergency gates at the existing Abiquiu Dam, New Mexico and authorizes $2.5 M to be appropriated for this purpose.

Section 304. places the geographic area of the State of New Mexico under the Corps district office in Albuquerque.

Section 305. authorizes the Secretary to provide hydropower to the city of Abbeville, SC, to mitigate losses at the city plant which will occur when Richard B. Russel Project is completed and the dam is filled.

Section 306. authorizes the Secretary of the Army to modify the Waterbury dam in Vermont, as authorized for such modification in the Flood Control Act of 1944.

Section 307. modifies the boundary lines of the Tacoma, Washington harbor channel.

Section 308. authorizes the Secretary to study water conservation and resources in the North Marianas Islands and Trust Territories. Authorizes a total of $175,000 for such studies.

Section 309. adds water supply to the list of authorized project purposes for the existing Brazos River Basin project in Texas.

Section 310. directs the Secretary of the Army, in consultation with the Secretary of the Interior and the Secretary of Energy, to determine the amount of hydroelectric power which would be required for development of the Missouri River Basin project in South Dakota under the Flood Control Act of 1944, and to make such power available for pumping Missouri River water at sites designated by the State. If the State resells the power any revenues derived from such sale shall be used by the State for economic or resources development.

Section 311. modifies authorization of the Jackson Hole-Snake River project, Wyoming, to allow for Federal assumption of project maintenance in excess of $35 thousand annually.

Section 312. modifies the authorization for the Truth or Consequences unit of the Rio Floodway, New Mexico, to allow for a flood control dam in lieu of a floodway.

Section 313. authorizes Secretary of the Army to consider the Acequia Systems of the Southwest as public entitles to allow officials of the systems to serve as local sponsors of Corps projects.

Section 314. authorizes the Secretary of the Army to implement a demonstration program for an irrigation project on the St. Johns River, Maine, and authorizes appropriations of $3.4 million for this purpose.

Section 315. provides for the inclusion of Starr County, Texas in the bank protection program of the Rio Grande Bank protection project.

TITLE IV. DAM SAFETY

Section 401. (a). requires that dams having certain safety-related characteristics but not meeting the minimum size requirements set forth in P.L. 92-367 be included in the National Inventory of Dams.

Section 401. (b). adds the following new sections to P.L. 92-367:

Section 7 authorizes $15,000 per annum for five years beginning in FY '84 to be distributed on a 50-50 matching basis to states having dam safety programs meeting the requirements of Section 8 of this bill. One-third of this money is to be equally divided among those states and two-thirds is to be distributed according to the number of dams which are on the National Inventory in each respective state.

Section 8 delineates those criteria which a state's dam safety program must possess in order to be eligible for funding under Section 7.

Section 9 authorizes the Federal Emergency Management Agency to study the need for, and effects of, a Federal reinsurance program for the owners of non-Federal dams.

Section 10 authorizes a Federal Dam Safety Review Board, consisting of representatives of the Corps, the Department of the Interior, the Department of Agriculture, the TVA, and the Federal Emergency Management Agency, as well as five non-Feder-

al, Presidentially appointed members. The Board is to be authorized to perform three functions: (i) to review design and safety standard of dams constructed and operated by the Federal Government, (ii) to review state implementation of this Act, and (iii) to study the need for a Federal loan program for repair of unsafe non-Federal dams.

Section 11 requires Federal dam building agencies to consult with host states, upon request, on the operation, maintenance, construction, or safety inspection of agency dams.

Section 12 provides funds for the Corps of Engineers to provide training for state dam safety personnel. Authorizes $1,000,000 the first year and $500,000 for the next four years.

Section 13 authorizes $1,000,000 for each of five fiscal years beginning in fiscal year 1984 for the Bureau of Standards to conduct dam safety related research.

Section 14 authorizes $500,000 for each of five fiscal years beginning in fiscal year 1984 for the Corps to update and maintain the National Inventory of Dams.

Section 402. requires the Corps of Engineers and the Soil Conservation Service to provide in their project reports which include dams information as to factors that could contribute to and the consequences of the dam's failure.

Section 403. defines this title as the "Dam Safety Act of 1983".

TITLE V. INLAND NAVIGATION

Section 501. sets a ceiling of $500 M per annum on obligations of the Corps of Engineers for the operation, maintenance, rehabilitation, and construction of the inland navigation system.

Section 502. authorizes the Secretary of the Army to charge fees for the collection of moneys to be used above the ceiling level established in Section 501, and defines the inland waterway system as those waterways authorized to be constructed or maintained to depths of 12 feet or less.

Section 503. establishes an Inland Waterway Users Board of 21 members to make recommendations to the Secretary of the Army on the spending levels for the inland waterways and requires that the Secretary limit such spending to the level recommended.

Section 504. authorizes the Secretary of the Army to rehabilitate navigation projects without specific authorization if the cost of such rehabilitation is less than $25 million.

Section 505. authorizes for construction ten shallow draft navigation and inland navigation projects.

Section 506. authorizes the Secretary of the Army to maintain the New York State Barge Canal at 50 percent Federal cost.

Section 507. authorizes for development the Comprehensive Master Plan for the Management of the Upper Mississippi River System, including a second chamber at Lock and Dam 26 on the Mississippi River and various environmental rehabilitation and enhancement measures.

TITLE VI. COST SHARING

Section 601. requires that all projects authorized in the future or in the Act meet the cost-sharing standards of the Act, and sets those percentages at:

100% for hydropower;

100% for municipal and industrial water supply;

50% for recreation;

50% for public/100% private for beach nourishment;

35% for fish and wildlife mitigation and enhancement;

35% for flood control, agricultural drainage; and agricultural water supply.

Section 602. provides that payment in kind may be accepted but that for structural flood control projects, 5% of costs are to be contributed in cash during construction; that for non-structural flood control projects no cash contribution is required; and that contribution repayment may be made during construction or over 30 years with interest, for all projects. The applicable interest rate is that authorized by law, if any, or the current rate as determined by the Secretary of the Treasury. A one-year deferral of first payment is allowed.

Section 603. requires that cost-sharing agreements for flood control, rural drainage, or agricultural water be consistent with sponsor ability to pay, and that where such ability is not now determined in accord with existing law, such ability shall be made under procedures determined by the appropriate agency Secretary.

Section 604. defines procedures for previously authorized but unconstructed projects. No cost sharing above authorized levels is required, but for ten years such projects may not be initiated unless sponsors agree to contribute 50% of the difference between authorized level and the new level required for such project under section 601.

TITLE VII. PROJECT AUTHORIZATIONS

This title authorizes for construction 70 projects of the Corps of Engineers for flood control and other purposes.

By Mr. BINGAMAN:

S. 1740. A bill entitled the "San Juan Basin Wilderness Protection Act of 1983"; to the Committee on Energy and Natural Resources.

SAN JUAN BASIN WILDERNESS PROTECTION ACT

● Mr. BINGAMAN. Mr. President, I am pleased to introduce the San Juan Wilderness Act of 1983, a wilderness bill which has broad support in New Mexico including the Governor, the commissioner of public lands, and the Navajo tribal chairman.

Last January, I joined with the distinguished senior Senator from New Mexico, Senator DOMENICI, in introducing S. 267, a bill to designate approximately 4,000 acres in the San Juan Basin of New Mexico as wilderness. This bill created a considerable amount of interest among many different groups. I subsequently attended a hearing in New Mexico of the House Public Lands and Mining Subcommittees which focused on wilderness and coal leasing in the San Juan Basin. These hearings were very informative and proved to me that there was overwhelming support and justification for providing wilderness protection for an enlarged area of the basin including the Bisti, the De-na-zin, the Ah-shi-sle-pah wilderness study areas and special management for the Fossil Forest. I am pleased to address these concerns by offering a bill today, the San Juan Basin Wilderness Protection Act, which designates as wilderness all three of the BLM wilderness study areas in the region and which directs the BLM to manage the 2,720 acres comprising Fossil Forest in a manner to protect and enhance its unique natural, paleontological, and other scientific values. My distinguished colleague from the Third District of New Mexico, Representative BILL RICHARDSON, is introducing a companion bill in the House of Representatives.

I am taking this action in advance of final wilderness recommendations by the Department of the Interior for these areas in order to insure that the wilderness option is not precluded by other conflicting land use decisions in the region. The BLM in New Mexico accelerated the study process for these lands for the same reason and has issued draft recommendations for the areas. Because of the coal leasing schedule and the complex nature of landownership, patterns and land uses within these WSA's, it may be necessary to exchange lands and/or leases in order to provide for wilderness protection. It is, therefore, important that the wilderness decision be made concurrently with the other land use decisions for the San Juan Basin.

After consultation with the State of New Mexico, I have modified the BLM study area boundaries in De-na-zin to include 2,520 acres of lands currently owned by the State of New Mexico. I further have modified the boundaries of the WSA's to include an additional 80 acres of Federal lands in the De-na-zin and 640 acres of Federal land in the Ah-shi-sle-pah. These modest additions will significantly enhance the wilderness proposals by providing a more logical geographical and topographical unit.

The bill directs the Secretary of the Interior to negotiate land exchanges to acquire all State lands and interests within the proposed boundaries of the De-na-zin. The language sets specific timeframes and procedures for this exchange to insure that the exchanges are initiated and completed expeditiously.

There is an inholding of 1,280 acres of Indian allotment trust lands within the De-na-zin, which will become wilderness only if a land exchange which is agreeable with the individual allottees can be arranged. The bill also provides rights of historic access to the occupants of the Navajo trust lands.

Portions of both the De-na-zin and Ah-shi-sle-pah wilderness proposals have been selected by the Navajo Tribe pursuant to the Navajo/Hopi Settlement Act. This creates a potential conflict with the wilderness designation for those lands.

However, the tribal leadership has assured me that they too wish to protect the wilderness values of those lands, and I am confident that as we consider this bill we can find a solution that will both assure lasting wilderness protection for the lands and meet the needs of the Navajo Tribe. The ultimate resolution of the Navajo

resettlement may be years away. We neither wish to leave the De-na-zin and Ah-shi-sle-pah areas unprotected nor to prejudice the outcome of the Navajo relocation process. I have therefore included language to insure that this bill will in no way amend or affect the Navajo/Hope Settlement Act of 1976 or the amendments to it of 1980.

I would consider it highly undesirable to designate lands as wilderness merely to remove them from the wilderness system at a later date. It would be equally undesirable to leave these lands unprotected until the Navajo resettlement question is resolved. I am therefore committed, during the legislative process to work with the tribe and other interested parties to devise a workable solution.

In summary, I have been assured support of this bill by the Navajo Nation and the State of New Mexico. The State is willing to exchange its lands within the areas and the Navajos have expressed a commitment to protect wilderness values. There are some pre- and post-FLPMA oil and gas leases, mining claims and coal preference right lease applications within the wilderness proposals. As with all wilderness legislation, this bill recognizes and protects valid existing rights. These and other matters will be further resolved during the hearing process.

I am proud to follow the example set by Senator Clinton Anderson, who was instrumental in passage of the Wilderness Act of 1964, which included the Gila Wilderness near my home in southern New Mexico as the first designated wilderness area in America. The San Juan Basin Wilderness Protection Act of 1983 will be a significant addition to the national wilderness presevenation system. It is important that we preserve the significant cultural, paleontological, scientific, and scenic values of this area which will be given permanent protection by this act.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1740

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "San Juan Basin Wilderness Protection Act of 1983."

SEC. 2. (a) In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131-1136), the following lands are hereby designated as wilderness, and, therefore, as components of the National Wilderness Preservation System—

(1) certain lands in the Albuquerque District Bureau of Land Management, New Mexico, which comprise approximately three thousand nine hundred and sixty-eight acres, as generally depicted on a map entitled "Bisti Wilderness—Proposed," dated June 1983, and which shall be known as the Bisti Wilderness;

(2) certain lands in the Albuquerque District of the Bureau of Land Management, New Mexico, which comprise approximately twenty three thousand eight hundred and seventy-two acres, as generally depicted on a map entitled "De-na-zin Wilderness—Proposed," dated June 1983, and which shall be known as the De-na-zin Wilderness; and

(3) certain lands in the Albuquerque District of the Bureau of Land Management, New Mexico, which comprise approximately seven thousand one hundred and ninety-three acres, as generally depicted on a map entitled "Ah-shi-sle-pah Wilderness—Proposed," dated June 1983, and which shall be known as the "Ah-shi-sle-pah Wilderness."

(b) Subject to valid existing rights each wilderness area designated by this Act shall be administered by the Secretary of the Interior in accordance with the provisions of the Wilderness Act, except that any reference in such provisions to the effective date of the Wilderness Act (or any similarly reference) shall be deemed to be a reference to the effective date of this Act, and any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

(c) As soon as practicable after enactment of this Act, a map and a legal description on each wilderness area designated by this Act shall be filed by the Secretary of the Interior with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the House of Representatives. Each such map and description shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in each such legal description and map may be made by the Secretary subsequent to such filings. Each such map and legal description shall be on file and available for public inspection in the Office of the Director of the Bureau of Land Management, Department of the Interior.

(d) Within the wilderness areas designated by this Act, the grazing of livestock, where established prior to the date of enactment of this Act, shall be permitted to continue subject to such reasonable regulations, policies, and practices as the Secretary of the Interior deems necessary, as long as such regulations, policies and practices fully conform with and implement the intent of Congress regarding grazing in such areas as such intent is expressed in the Wilderness Act and this Act.

SEC. 3. (a) In recognition of its paramount aesthetic, natural, scientific, educational and paleontological values, the approximately two thousand seven hundred and twenty acre area in the Albuquerque District of the Bureau of Land Management, New Mexico, known as the "Fossil Forest", as generally depicted on a map entitled "Fossil Forest", dated June 1983, is hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and geothermal leasing and all amendments thereto. The Secretary of the Interior shall administer the area in accordance with the Federal Land Policy and Management Act and shall take such measures as are necessary to insure that no activities are permitted within the area which would significantly disturb the land surface or impair the area's existing natural, educational, and scientific research values, including paleontological study, excavation, and interpretation.

(b) Within one year of the date of enactment of this Act the Secretary of the Interior shall promulgate rules and regulations for the administration of the Fossil Forest area referred to in subsection (a) in accordance with the provisions of this Act and shall file a copy of such rules and regulations with the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

SEC. 4. (a) The Secretary of the Interior shall exchange such public lands or interest in such lands, mineral or nonmineral, as are of approximately equal value and selected by the State of New Mexico, acting through its Commissioner of Public Lands, for any State lands or interest therein, mineral or non-mineral, located within the boundaries of any of the tracts designated as wilderness under section 2. For the purpose of this section, the term public lands shall have the same meaning as defined in section 103(c) of the Federal Lands Policy and Management Act of 1976.

(b) Within one-hundred and twenty days of enactment of this Act, the Secretary of the Interior shall give notice to the New Mexico Commissioner of Public Lands of the tracts to be designated as wilderness pursuant to section 2 of this Act and of the Secretary's duty to exchange public lands selected by the State for any State land contained within the boundaries of the designated wilderness areas. Such notice shall contain a listing of all public lands which are located within the boundaries of the State, which have not been withdrawn from entry and which the Secretary identifies as being available to the State in exchange for such State lands as may be within the designated wilderness areas.

(c) The value of the State and public lands to be exchanged under this section shall be determined as of the date of enactment of this Act.

(d) After the receipt of the list of available public lands, if the Commissioner of Public Lands gives notice to the Secretary of the State's selection of lands, within one-hundred and twenty days of such notice of selection, the Secretary shall notify the State in writing as to whether the Department of the Interior considers the State and Federal lands to be of approximately equal value. In case of disagreement between the Secretary and the Commissioner as to relative value of the acquired and selected lands, the Secretary and the Commissioner shall agree on the appointment of a disinterested independent appraiser who will review valuation data presented by both parties and determine the amount of selected land which best represents approximate equal value. Such determination will be binding on the Secretary and the Commissioner.

SEC. 5. (a) The Secretary of the Interior shall exchange any lands held in trust for an Indian whose lands are located within the boundary of the De-na-zin area referred to in section 2(a)(2) at the request of the Indian for whom such land is held in trust. Such lands shall be exchanged for lands approximately equal in value selected by the Indian allottee concerned and such lands so selected and exchanged shall thereafter be held in trust by the Secretary in the same manner as the lands for which they were exchanged.

(b) Nothing in this Act shall affect the transfer to the Navajo Tribe of any lands selected by the Navajo Tribe pursuant to Public Law 93-531 and Public Law 96-305.●

By Mr. HART (for himself and Mr. KENNEDY):

S. 1741. A bill to halt the introduction of U.S. combat units into Central America without the approval of Congress; to the Committee on Foreign Relations.

AMERICAN COMBAT UNITS IN CENTRAL AMERICA

Mr. HART. Mr. President, joined by Senator KENNEDY, I am introducing legislation today to halt the expansion of American combat units in Central America.

Sending American combat troops into this volatile area is similar to pushing a stick of dynamite closer to a lighted match. By halting our military involvement in Central America, this bill would give the Congress and the American people an important opportunity to examine recent events in that region and to achieve a consensus on the appropriate response by the United States. Under this bill, our reassessment of U.S. Central American policy would be free from the risk that increased U.S. military activities would further inflame tensions in the region.

The intent of this legislation is clear: No combat units of the Armed Forces may be sent into the territory, airspace, or waters of Costa Rica, El Salvador, Guatemala, Honduras, or Nicaragua for training exercises or any other purpose unless:

First. Congress has authorized the presence of such units in such areas in advance by a joint resolution signed by the President of the United States; or

Second. The presence of such units is necessary to provide for the immediate evacuation of U.S. citizens; or to respond to a clear and present danger of military attack on the United States.

I believe the administration's decision to increase the American military presence in Central America is unwise and provocative. America is once again being viewed, because of the President's actions, as a bully looking for a fight. There is no clear, present, or urgent national security rationale for increasing our military presence in Central America.

Nor do the President's actions enhance the diplomatic efforts by the Contadora group to secure peace in Central America.

We need more diplomatic maneuvers and fewer military maneuvers in this region of violence and conflicting political interests.

The administration views Central America as breeding ground for communism. I view it as a proving ground for democracy. The people of Central America will either become our best allies, or our worst enemies. The administration's provocative actions over the last 2½ years suggests that the administration instead of hoping for the former seems to be guaranteeing the latter. I view the increased presence of American combat units in Central America as another symbolic action which serves no true national security need.

I urge my colleagues to support a halt of the expansion of U.S. combat troops in Central America. I ask unanimous consent that the text of the bill be inserted in the RECORD at this time.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1741

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no combat units of the Armed Forces of the United States may be sent into the territory, airspace, or waters of Costa Rica, El Salvador, Guatemala, Honduras, or Nicaragua for training exercises or any other purpose unless—

(1) Congress has authorized the presence of such units in such areas in advance by a joint resolution signed by the President of the United States; or

(2) the presence of such units is necessary to provide for the immediate evacuation of United States citizens, or to respond to a clear and present danger of military attack on the United States.

In either case described in paragraph (2), the President should advise and, to the extent possible, consult in advance with the Congress.

By Mr. MELCHER (for himself and Mr. INOUYE):

S. 1742. A bill to amend title 38, United States Code, to provide hospital, nursing home, and domiciliary care and medical services to certain persons who participated in armed conflict with an enemy of the United States while in the service during World War II in the former First Special Service Force, a joint military unit of the United States and Canada; to the Committee on Veterans' Affairs.

HEALTH CARE FOR CERTAIN WORLD WAR II COMBAT VETERANS

Mr. MELCHER. Mr. President, today for myself and Senator INOUYE I am introducing a bill to amend section 109 of title 38 of the code in order to provide hospital, nursing home, and domiciliary care and medical services to individuals who participated in armed conflict with an enemy of the United States while serving during World War II in the former First Special Service Force, a joint military unit of the United States and Canada.

In 1976, Congress enacted legislation providing medical care and benefits to the members of the armed services of Poland and Czechoslovakia who participated in armed conflict against the enemies of the United States and who had been a U.S. citizen for at least 10 years. My bill will extend the same rights to medical care through the Veterans Administration to those Canadians who served with the First Special Service Force organized in Helena, Mont., during World War II.

The First Special Service Force came into being in 1942, the year after the United States had entered the European Theater. It grew out of a need for special parachute troops that could be dropped over scattered snow areas of Europe—especially Norway—to sabotage enemy installations. But it soon became apparent that a more versatile assault group, able to undertake any task that might be assigned to them, would have to be raised and trained.

The United States and Canada promised to deliver such a force made up of rugged volunteers, handpicked from their respective units.

Wearing a red spearhead as a shoulder flash, this Canadian-United States elite force first went into action in the Pacific theater and then in the Mediterranean, following the Sicily landing. By a daring maneuver it captured strategic Monte la Difensa, an extremely difficult piece of ground. Fighting side by side with the U.S. 5th Army under Lt. Gen. Mark Clark, the First Special Service Force maintained its aggressive offensive throughout the Italian campaign. Their determined fighting aided in the liberation of Rome and was the culmination of their valiant exploits on the battlefield.

The Devil's Brigade, as it came to be known, remained in European theater as a separate entity until the end of 1944, when it was disbanded after the southern France campaign.

We owe much to our Canadian allies who helped win World War II, particularly to those excellent soldiers who helped make up the First Special Forces. Because of their experience, some of these fighting men later settled in the United States and became U.S. citizens. My bill will insure that they are eligible for medical care through the Veterans' Administration, as are the members of Polish and Czechoslovakian units who fought under U.S. command in World War II.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1742

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 109 of title 38, United States Code, is amended by adding at the end therof the following new subsection:

"(d)(1) Except as otherwise provided in this paragraph, any person who participated in armed conflict with an enemy of the United States while serving during World War II as a member of the First Special Service Force (a military unit organized jointly by the governments of the United States and Canada), who was not a citizen of the United States while so serving, and who is and has been a citizen of the United

States for at least ten years shall, by virtue of such service and upon submitting satisfactory evidence thereof, be entitled to hospital, nursing home, and domiciliary care and medical services within the United States under chapter 17 of this title to the same extent that such person would be entitled to such care and services if such person had performed the military service as a member of the Armed Forces. The first sentence of this paragraph shall not apply in the case of a person who is entitled to, or upon application would be entitled to, equivalent care and services or payment for equivalant care and services under a program established by the Government of Canada for persons who served in its armed forces during World War II.

"(2) In order to assist the Administrator in making a determination of eligibility under paragraph (1) of this subsection, each applicant for the benefits described in such paragraph shall furnish to the Administrator an authenticated certification from the Department of Defense or from such agency of the Government of Canada as the Administrator considers appropriate stating that the records of the Department of Defense or such agency clearly indicate that the applicant performed service and participated in armed conflict as provided in paragraph (1) of this subsection.".

By Mr. PELL:

S. 1743. A bill to amend the Tariff Schedules of the United States to suspend for a 3-year period the duty on certain benzenoid chemicals (NA-125 and NA-125-chloride); to the Committee on Finance.

DUTY SUSPENSION ON BENZENOID CHEMICALS

● Mr. PELL. Mr. President, I am introducing for appropriate reference a bill to suspend duties on certain benzenoid chemicals used by a manufacturer in Rhode Island to fabricate computer chips for high technology industries.

I am advised that there are no domestic producers of these chemicals, and my constituent, Carroll Products, Inc., of Wood River Junction, RI, must import large volume quantities from the only known manufacturers in Japan and Germany.

My bill would suspend import duties on these chemicals for 3 years. Since there are no domestic producers, no domestic industry would be jeopardized.

Mr. President, the State of Rhode Island ranks fourth in the Nation in the percentage of employment attributable to foreign trade. While we, like every other State, have our share of less competitive industries which require other policies, we welcome opportunities for relaxation of trade barriers, especially those for which there is no apparent justification. Carroll Products appears to offer just such an opportunity and I hope this bill will receive prompt and favorable consideration.●

By Mr. MELCHER:

S. 1744. A bill to provide a pilot project for excellence in elementary and secondary education; to the Committee on Labor and Human Resources.

PILOT PROJECT IN EDUCATION EXCELLENCE ACT

Mr. MELCHER. Mr. President, I am today introducing the Pilot Project in Educational Excellence Act of 1983 to provide assistance to selected local school districts who desire to test the premise that a longer day and longer school year will improve the quality of education in America.

Current economic conditions in most States and school districts prohibit implementation of this recommendation of the National Commission on Educational Excellence in the immediate or near future. Whether or not the Commission's theory is valid should be tested before the American taxpayers, at all levels of government, are asked to provide the necessary funds to implement the proposal.

I recognize that other actions are also required if the Commission's challenge to achieve quality education is to be achieved. But the increased teacher time is one strong recommendation that can be computed as to cost. At the current teacher salary average of $18,000 a year, the additional cost will be $8,000 per teacher.

The bill provides for a process for selection by the education officials of local and State governments of school districts who volunteer to participate in this program. At least one elementary, junior or middle school, and high school in several categories ranging from small rural schools to large inner city urban schools will be selected. Each State that elects to participate will have at least one nominated school selected.

This is clearly an experimental project. The bill is designed to eliminate any vestige of Federal control over local school districts' policies. The timetable included is designed to preclude the Secretary of Education from destroying the purpose of the program through commonly used delaying tactics. There is no need for regulations. The bill spells them out.

The cost is comparatively minor for this pilot project. If it proves to be a great success, the issue of substantial funding in fiscal year 1987 will have to be faced by all levels of government. Taxpayers at all levels will need facts, not theory, when that time comes. That is the purpose of this legislation.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1744

Be it enacted by the Senate and House of Representatives of the United States of America in Congess assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Pilot Project In Educational Excellence Act".

FINDINGS

SEC. 2. The Congress finds that the theory of the National Commission on Educational Excellence (hereinafter called the Commission) concerning extending the school year and the length of each school day merits further consideration. Current economic conditions in most States and school districts prohibit implementation of this theory in the immediate or near future, if ever. Whether or not the Commission's theory is valid should be tested before American taxpayers at all levels of government are asked to provide the necessary funds.

SEC. 3. (a) Within 30 days of the enactment of this law, the Secretary of Education shall notify each State education agency in the 50 States and the District of Columbia of the purposes of this pilot program.

(b) Within 30 days of receipt of the notification by the Secretary, each State education agency shall notify each local education agency of the purposes of this pilot program, and invite them to nominate schools within their district of the various types of schools as outlined in section 4 of this Act.

(c) Within 60 days of notification by the State education agency to the local educational agencies, those school districts which wish to participate shall notify the State education agency of which schools within their districts apply to participate in this pilot program.

(d) Within 20 days of receipt of the local applications, the State education agency, in consultation with the State Educational Excellence Advisory Committee, as defined in section 3(a) shall identify appropriate schools of the types listed in section 4 and shall submit the list to the Secretary of Education.

(e) The State Educational Excellence Advisory Committee shall be composed of not more than nine persons, at least one of whom shall be an elementary school teacher, one secondary teacher, one local school administrator, one local school board member, one business representative, one State legislator, and one high school student. Appointment of committee members by the chief State school officer shall be made from lists of 10 nominees submitted by the appropriate organizations in each State and shall be broadly representative of the economic and cultural composition of the population of the State. Advisory Committee members shall receive expenses for travel, food, and lodging, but not per diem, for days when they are in session.

SEC. 4. (a) From among the applications submitted to the Secretary of Education, the Secretary, in consultation with the members of the National Commission on Educational Excellence (or a Commission of persons of equal competence and experience which he may appoint), shall select at least one school of the following types:

I. A large inner-city secondary school; a large suburban secondary school; a medium-size secondary school; a small town secondary school; a rural community secondary school; three secondary schools with predominately black, Hispanic or Native American students; one secondary school with a multi-cultural student body, including Asians.

II. At least one elementary school, and, if funds are available, one junior high or middle school, of the types listed in Sec. 4(c)I.

III. Each state which participates in this program shall have not less than one school, from the list submitted by the state education agency in accordance with Sec. 3(d), designated by the Secretary as a pilot school.

The Commission authorized in Sec. 4.(a) shall evaluate the results of the pilot project and disseminate its findings to Congress and to the public.

SEC. 5. (a) Each school selected in accordance with Section 4 shall be guaranteed, for each school year beginning in the fall of 1984, and for each succeeding two years, funds in amount of 35 percent of the cost of operating the school during the 1983-84 term: provided that

(A) The governing board of the school certifies that the student body and faculty of the pilot school shall be, in so far as possible, equal in size, ability and cultural diversity to those characteristics of the pilot school year 1983-84, providing further that the pilot school shall be in session 220 days for 7 hours each day.

(B) The governing board of the local school shall continue to provide an operating budget to the pilot school equal to the school's operating budget for the 1983-84 year, for each year of the pilot program, adjusted appropriately for inflation and normal salary increases.

(2) The state education agency shall provide such assistance as is requested by the local educational agency.

SEC. 6. (a) From funds available under Section 7 of this Act the Secretary shall transmit, on or before March 30, 1984, March 30, 1985, and March 30, 1986, payments to each pilot school in an amount equal to 35 percent of the school's operating budget for the school year 1983-84, appropriately adjusted according to Section 5.(a)(I)(A).

In addition to the funds provided herein, each pilot school shall continue to be eligible and to receive funds available to all other schools under all other federally-funded programs appropriate to the school, provided that such funds be increased for the pilot school by 35 percent for each year of participation as a pilot school.

SEC. 7. There is hereby authorized to be appropriated to the Secretary of Education, for the purposes of this Act,

(a) Not to exceed $62 million for fiscal year 1984, not more than $2 million of which shall be reserved to the Secretary for purposes of Sec. 3.

(b) Not to exceed $66 million in fiscal year 1985, of which not more than $1 million shall be reserved to the Secretary.

(c) Not to exceed $71 million in fiscal year 1986, of which not more than $1 million shall be reserved to the Secretary.

(d) Not to exceed $1.5 million for fiscal year 1987, to be used for evaluation, including appropriate testing, and widely disseminating the findings of the Commission authorized in Sec. 4.(a) of this Act.

SEC. 8. No federal officer, or employee shall have any control over any school selected for this pilot project. Nor shall any such person, when acting in official capacity, require, recommend, suggest, or otherwise indicate any policy or practice as appropriate for any pilot school selected in accordance with this Act.

By Mr. SYMMS (for himself, Mr. DURENBERGER, and Mr. MATSUNAGA):

S. 1745. A bill to amend the Internal Revenue Code of 1954 to provide certain physicians' and surgeons' mutual protection associations with tax-exempt status for certain purposes; and for other purposes; to the Committee on Finance.

TAX TREATMENT OF PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION ASSOCIATIONS

Mr. SYMMS. Mr. President, Senators DURENBURGER, MATSUNAGA, and I are introducing legislation today to provide that payments to nonprofit mutual protection and indemnity associations providing medical malpractice coverage for doctors will not be subject to tax upon receipt by the association and that such payments would be deductible by the doctors to the extent of normal insurance premiums paid to a private carrier.

As a result of the escalation of jury awards in medical malpractice litigation, there has been a continuing crisis involving the skyrocketing cost of medical malpractice insurance coverage. One response to this crisis has been the adoption of special State laws in States such as California, Hawaii, and perhaps in the near future even New York, which have permitted the establishment of doctor controlled insurance organizations to help reduce risks and to help lower the cost of malpractice insurance coverage.

Several of the new organizations require doctors to make a large initial contribution to the organization to provide a fund to meet potential insurance risks. When doctors leave the fund, they may, under certain circumstances, receive a refund of this initial contribution—without interest. After the initial contribution to the organization is made, the doctor-members are then subject to later assessments if additional amounts are deemed necessary to pay claims covered by the organization. The initial contribution, therefore, also serves as security to insure that these later assessments will be paid.

Because these organizations have the ability to assess their member-doctors when and if its funds are not adequate to meet future claims, and because their costs of operation are significantly lower than the costs of private insurance carriers, their rates for a high risk doctor are significantly less than those which would be charged to a private carrier even when the high initial contribution is taken into account. For example, an anesthesiologist, a comparable rate differential in the past has been as follows:

	Self-insured trust	Private carriers
1977	$23,100	$23,904
1978	600	23,904
1979	600	21,516
1980	1,100	20,852
1981	1,075	19,592
Total	26,475	109,768

In addition, as nonprofit organizations, these self-insurance trusts do not have to have a profit margin on top of their actual costs and this factor also helps reduce the ultimate cost of medical care.

Finally, since the self-insurance trusts are doctor controlled and their own members are subject to assessment, there is a real incentive to improve the level of practice of their members. Obviously, since a doctor-member of a self-insurance trust has something to gain or lose as a result of his standards of practice and that of his fellow members, greater care is likely to be taken—and taken by the self-insurance trust in the form of peer review and other actions—than would be taken when all risks are turned over to a third party insurer.

Unfortunately, under the current tax law, the initial contributions made to these self-insurance trusts are not considered to be deductible business expenses to the doctors who make such payments even though a similar payment of an insurance premium to a profitmaking organization would be deductible to the doctors.

This result has several perverse and unusual effects. First, some doctors do not choose to participate in the self-insurance trusts because they must pay after tax dollars for their initial contributions to the trusts whereas premiums paid for the same coverage to a private carrier would be deductible. Second, since the cost of obtaining coverage by the self-insurance trust is much less, especially in the early years, it would seem that the Treasury would collect more revenue sooner if a self-insurance trust was used by more doctors since deductions taken by those doctors would be less than deductions taken by doctors covered by a private carrier. Indeed, the system is more efficient and defers the payment of expenses, the Treasury stands to benefit.

The legislation Senator DURENBURGER, MATSUNAGA, and I are introducing today is intended to have the following positive effects:

First, to increase Treasury revenues by encouraging doctors to use a self-insurance type system for medical malpractice protection and thus pay lesser amounts of deductible premiums.

Second, to rectify the current system where premium costs paid to a private carrier are deductible but initial contributions to nonprift organizations are not.

Third, to reduce the cost of malpractice protection and therefore to help reduce the cost of medical care.

Fourth, to encourage the improvement of standards of medical practice which occurs when doctors actually have a stake in the system and are directly affected when claims are made against the insurance provider.

Fifth, to help reduce medical malpractice insurance rates so that doctors will continue their practice and will also not go without adequate insurance coverage.

Mr. President, I encourage all of my colleagues to seriously consider supporting this legislation. Medical malpractice insurance coverage and the jury awards in medical malpractice litigation are major factors in the escalating cost of health care coverage. The self-insurance trusts that are evolving in our economy is a market response to controlling the cost of insurance and holding down the cost of health care.

I ask unanimous consent that the text of the bill be printed in the CONGRESSIONAL RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1745

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROVIDING CERTAIN PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION ASSOCIATIONS WITH TAX-EXEMPT STATUS FOR CERTAIN PURPOSES.

(a) IN GENERAL.—Subchapter F of chapter 1 of the Internal Revenue Code of 1954 (relating to exempt organizations) is amended by adding at the end thereof the following new part:

"PART VIII—CERTAIN PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION ASSOCIATIONS

"Sec. 529. Certain physicians' and surgeons' mutual protection associations.

"SEC. 529. CERTAIN PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION ASSOCIATIONS.

"(a) GENERAL RULE.—There shall not be included in gross income the receipts of physicians' and surgeons' mutual protection and indemnity associations—

"(1) which are not organized for profit,

"(2) which are authorized to provide malpractice insurance under the laws of any State, and

"(3) no part of the net earnings of which inures to the benefit of any private shareholder,

except that any such association shall be subject as other persons to the tax on their taxable income from interest, dividends, and rents, reduced by any amount allowable as a deduction to any mutual insurance company under part II of subchapter L.

"(b) SPECIAL RULES FOR INDIVIDUALS WHO ARE MEMBERS OF ASSOCIATION.—

"(1) PAYMENTS TREATED AS TRADE OR BUSINESS EXPENSES.—Any payment to an association described in subsection (a) by a physician or surgeon in connection with obtaining professional liability protection shall be considered an ordinary and necessary expense incurred in connection with his trade or business for purposes of the deduction allowable under section 162, to the extent such payment does not exceed the amount which would be payable to an independent insurance company for similar coverage (as determined by the Secretary). Any excess amount not allowed as a deduction for the taxable year in which such payment was made pursuant to the limitation contained in the preceding sentence shall, subject to such limitation, be allowable as a deduction in any of the five succeeding taxable years, in order of time, to the extent not previously allowed as a deduction under this sentence.

"(2) REFUNDS OF PAYMENTS.—If any amount attributable to any payment described in paragraph (1) is refunded to any physician or surgeon under any circumstances, such amount shall be included in gross income of such physician or surgeon for the taxable year in which such amount is received, to the extent that a deduction for such payment was allowed for any preceding taxable year."

(b) CLERICAL AMENDMENT.—The table of parts for subchapter F of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Part VIII—Certain physicians' and surgeons' mutual protection associations."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made to and receipts of physicians' and surgeons' mutual protection associations, and refunds of payments by such associations, after December 31, 1983, in taxable years ending after such date.

By Mr. RUDMAN:

S. 1746. A bill to require that the Federal Government procure from the private sector of the economy the goods and services necessary for the operations and management of certain Government agencies and that the Director of the Office of Management and Budget and the Comptroller General of the United States identify the activities of the Federal Government to produce, manufacture, or otherwise provide goods and services which should be provided by the private sector and prepare a schedule for transferring such activities to the private sector; to the Committee on Governmental Affairs.

(The remarks of Mr. RUDMAN on this legislation appear earlier in today's RECORD.)

By Mr. ARMSTRONG (for himself, Mr. COHEN, Mr. HOLLINGS, Mr. MATSUNAGA, Mr. CRANSTON, Mr. BRADLEY, Mr. D'AMATO, Mr. DECONCINI, Mr. DOLE, Mr. HART, Mrs. HAWKINS, Mr. KASTEN, Mr. KENNEDY, Mr. MITCHELL, and Mr. BOSCHWITZ):

S. 1747. A bill to amend title 38, United States Code, to establish two new programs of educational assistance for veterans of peacetime service, to close the post-Vietnam-era veterans' educational assistance program to new participants, and to repeal the December 31, 1989, termination date of the Vietnam-era GI bill, and for other purposes; to the Committee on Veterans' Affairs.

PEACE-TIME VETERANS' EDUCATIONAL ASSISTANCE ACT

Mr. KENNEDY. Mr. President, I am pleased to join my colleagues in the Senate as cosponsor of this important bill to insure that our Armed Forces are staffed with qualified men and women. I commend Senators ARMSTRONG, CRANSTON, COHEN, HOLLINGS, and MATSUNAGA for their hard work and bipartisan success in developing this GI bill. Their continued efforts in this area have made the legislation we are introducing today an important and well-thought-out proposal. In the past, the main goal of the GI bills has been to assist the Nation's veterans in readjusting to civilian life after war duty. Those programs were highly effective. They were responsible for educating and broadening the horizons of countless Americans who would not have had such opportunities without those benefits. Some of my colleagues in the Senate and many Members of the House of Representatives reaped the benefits of the GI bill and would not be serving the people of our Nation in their present capacities were it not for this unique educational program.

More recently, the focus of a GI program has shifted from readjustment to recruitment and retention of personnel in our All-Volunteer Force. We are all aware of the recruitment difficulties that existed in our armed services in the late 1970's. At one point during that time, all four branches of the Armed Forces failed to reach their recruitment goals. Even President Reagan has expressed his strong concerns regarding the critical recruitment situation at that time. During his address before the 1980 Annual American Legion Convention in my home State of Massachusetts, then-candidate Ronald Reagan stated:

> We must provide the resources to attract and retain superior people in each of the services. We should take steps immediately to restore the GI bill, one of the most effective, equitable and socially important program ever devised.

We can all agree that over the past few years there has been a major improvement in the number of recruits and in the quality of these volunteers. Hard economic times and a tight job market have made enlistment an attractive option for many young men and women. But we must not become complacent about this situation. We must not allow our military to slip back into the posture that existed only a few years ago. An expected decline in military-age youth in the near future and the possibility of a stronger economy could revive these difficulties of the past.

In order to avoid this possibility and continue to recruit qualified personnel for our Armed Forces, we must act now to reestablish a GI bill. We must provide the necessary incentives to attract men and women to careers and opportunities in the military. The GI bill has proven to be one of the most effective and cost saving recruitment devices the military has ever had and we should reinstitute it.

I urge the Senate to act promptly on this important legislation, and to reaffirm our commitment to the personnel who are so essential to keeping our Nation secure.

By Mr. EAST (for himself and Mr. DENTON):

S. 1748. A bill to amend the National Labor Relations Act to apply explicitly the right-to-work laws of a State to Federal enclaves within the boundaries of that State; to the Committee on Labor and Human Resources.

APPLICATION OF STATE RIGHT-TO-WORK LAWS

● Mr. EAST. Mr. President, every American should have the right to work without being required to join a labor union as a condition of employment. This principle is particularly true because unions have in recent years increasingly become political organizations pursuing partisan goals. Because of this deep involvement with politics, compulsory unionism tramples the first amendment right of free association desired by those working men and women who object to the political activities of the unions certified as their exclusive bargaining representative.

Under the National Labor Relations Act, the right to work was completely unprotected, since employers and unions were allowed to enforce compulsory unionism. Section 14(b) of the 1947 Taft-Hartley Act, however, permitted States to prohibit compulsory unionism by enacting State right-to-work laws. Such State right-to-work laws prohibit union shop contracts between employers and unions. A union shop contract is a contract requiring an employee to become a union member as a condition of continuing employment. Union membership includes both the concept of joining the union and the core concept of financial support for the union.

Section 14(b) of the Taft-Hartley Act expressed Congress intent to allow States to prohibit contracts requiring employees to join the union or provide financial support for the union. I also believe that section 14(b) expressed Congress intent to allow States with right-to-work laws to enforce the right to work in all areas within their boundaries, including any Federal enclaves. I am therefore introducing a bill that would clarify Congress intent to have State right-to-work laws apply within Federal enclaves.

The need to clarify congressional intent regarding Federal enclaves arises because of Lord against Local 2088, International Brotherhood of Electrical Workers, an incorrect decision rendered in 1981 by the U.S. Court of Appeals for the Fifth Circuit. (646 Fed. 2d 1057, cert. denied, — U.S. —, 50 U.S.L.W. 3998 (1982.) According to that incorrect decision, a State right-to-work law now has no effect over civilian employees who are employed on Federal enclaves within the State. The Fifth Circuit so held despite the fact that Congress, in section 14(b) of the Taft-Hartley Act, clearly recognized the right of States to prohibit compulsory unionism within their borders.

Congress placed no conditions on this State power and granted no exemption for any sort of territory within the borders of States choosing to exercise the power. Section 14(b) simply states that compulsory unionism is illegal "in any State or territory in which [it is] prohibited by State or territorial law." Federal enclaves undoubtedly fall within that definition, since the Supreme Court has rules that even though lands within the borders of a State may be granted to the Federal Government, they do not cease to be a part of the State.

In fact, in *Howard* v. *Commissioners of Louisville* (344 U.S. 624 (1953)), the Supreme Court specifically denied the "fiction of a State within a State." The States regularly and without question enforce upon citizens who are actually residents of Federal enclaves State laws regarding personal and corporate tax, hunting and fishing, rules of liability, actions for death or personal injury, eligibility for voting, unemployment and workers' compensation, and criminal statutes except where Federal criminal law is in direct conflict.

As a Senator from a State which has chosen to offer its citizens protection from compulsory unionism, I must act to defend those citizen-workers of North Carolina who have enjoyed right-to-work protections since 1974 but who, because they happen to hold employment on a Federal enclave, are not to be stripped of that protection by this court-inflicted loophole. My bill will correct the problem, Mr. President, by amending section 14(b) to state clearly and specifically the applicability of State right-to-work laws to Federal enclaves.

I wish to point out that I submit this legislation in the spirit of bipartisanship. Governors and legislators of many right-to-work States, including the Democratic Governor and four Democratic Congressmen from my own home State, contacted the President last year urging intervention by the Department of Justice in the Lord case. They wanted the Department of Justice to argue in favor of the legal proposition embodied in my bill.

I urge my colleagues on both sides of the aisle, especially those from right-to-work States, to join me in restoring the right of elected officials to decide this vital issue without restriction and without exemption. With passage of this bill, we will help defend the freedom of individual workers on Federal enclaves to seek and hold a job in support of their families free of coercion.

Mr. President, I ask that the brief language of my bill be printed in full in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows;

S. 1748

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 14(b) of the National Labor Relations Act (29 U.S.C. 164(b)) is amended by inserting after "in any State or Territory" the following: "(including military and other reservations and other areas subject to the exclusive legislative jurisdiction of the Congress within such State or Territory)".●

● Mr. DENTON. Mr. President, I am proud to join with Senator EAST in introducing legislation to broaden protections for individuals who choose to join or not to join a union. The National Labor Relations Act gives the States and territories the right to enact laws which prohibit contracts requiring membership in a union as a condition of employment. A recent court decision, Lord against IBEW, has questioned the applicability of these laws on land within States that is ceded to the Federal Government and is under exclusive jurisdiction of the Congress.

Private wageearners in our Nation's military bases, national parks, forest lands, post offices, and Coast Guard stations should have the right to earn a living without the threat of losing their jobs because they do not wish to join a union. Those States which have laws prohibiting compulsory unionism should be able to protect the jobs of those citizens who gain employment in a Federal enclave.

The need for this legislation is clear. Last year, the Supreme Court refused to grant review of Lord against IBEW. The lower court decision rules that private-sector workers on Federal enclaves within States with right-to-work laws could lose their jobs by refusing to join a union. This ruling will threaten the job security of workers in 20 percent of the total area of the States with right-to-work laws unless the Congress moves to repeal it.

I, for one, feel that forced unionism is contrary to the protections guaranteed citizens by the first amendment. Fortunately, my own State, Alabama, prohibits compulsory unionism as a condition of employment. I do not feel that the people of Alabama who support this legislation intended for compulsory unionism to exist anywhere within the sovereign borders of our State. I am proud to cosponsor this legislation that will explicitly extend that prohibition to Federal enclaves.●

By Mr. THURMOND (for himself, Mr. BAKER, Mr. HOLLINGS, Mr. HELMS, Mr. EAST, Mr. TRIBLE, and Mr. CHILES):

S. 1749. A bill to grant the consent of the Congress to the southeast interstate low-level radioactive waste management compact; to the Committee on the Judiciary.

CONGRESSIONAL CONSENT TO THE SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

Mr. THURMOND. Mr. President, I am pleased to introduce today, on behalf of myself, Senator BAKER, Senator HOLLINGS, Senator HELMS, Senator EAST, Senator TRIBLE, and Senator CHILES, legislation to give congressional consent to the southeast interstate low-level radioactive waste management compact. As its title suggests, the primary purpose of this compact is to provide for the management and disposal of the low-level radioactive waste in the southeastern region of the country. The member States are Alabama, Georgia, Florida, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. All have ratified the current version of the compact except Georgia, which has ratified an earlier one. Georgia is expected, however, to approve the current language of the compact during its next session. Congressman BUTLER DERRICK of South Carolina is introducing similar consent legislation in the House of Representatives today as well.

The compacting process, in which almost all States have been engaged for the 2½ years, was essentially initiated by passage of the Low-Level Radioactive Waste Policy Act of 1980. Signed into law 3 days before Christmas of 1980, Public Law 96-573 established the policy that each State is responsible for disposal of the commercial waste generated within its borders and that such waste can be most safely and efficiently managed on a regional basis. It also authorized States to enter into interstate compacts to establish and operate regional disposal facilities for low-level waste. States of course did not need such prior authorization to enter into an interstate compact. Express authorization is not unusual, however, in instances where Congress wishes to encourage States to enter into compacts in a specific area of activity. The Policy Act required subsequent approval of the compacts by the Congress, a step which would have been required in any event by article I, section 10, clause 3 of the Constitution which provides that "[n]o State shall, without consent of Congress * * * enter into any agreement or compact with any other State. * * *" Perhaps the most significant provision of the act was the authority given to congressionally approved compacts to exclude waste generated outside that compact region after January 1, 1986.

Passage of the Policy Act was a major step toward addressing a problem which had previously received far less attention than the issues of high-level waste disposal and interim storage of commercial spent fuel. This lack of interest was easy to understand. As long as there were three commercial sites open and providing adequate storage space, there was little incentive for other States to consider opening additional sites—to become embroiled in the troublesome issues involved in siting, licensing, constructing, and operating new sites. If one represented, as I do, a State hosting one of these sites, this situation was clearly an unacceptable one. It placed three States—South Carolina, Washington, and Nevada—in the position of shouldering the entire responsibility for disposing of waste generated in all 50 States. The fundamental unfairness and inefficiency of this system was clearly brought into light in the summer of 1979 when the Governors of Nevada and Washington temporarily closed those sites and the Governor of South Carolina announced that the amount of waste accepted at the Barnwell site would be significantly reduced in the future. By these actions, South Carolina, Washington, and Nevada sent a clear warning signal to other States and to the Federal Government that action needed to be taken. An immediate crisis was averted, however, when the Washington and Nevada sites were reopened in late 1979.

In the following summer of 1980 in response to this situation, I offered an amendment regarding low-level waste disposal to S. 2189, the high-level waste disposal bill then pending on the Senate floor. My amendment, a precursor to the Low-Level Policy Act, authorized and encouraged States to enter into interstate compacts for the disposal of low-level waste on a regional basis. It also gave compacts entered into pursuant to that provision the authority to exclude waste generated outside the compact area as of the date of congressional approval. Congressman DERRICK of South Carolina pursued similar legislation in the House and secured its inclusion in the House nuclear waste bill. In December 1980, when the House and Senate were unable to agree on portions of the bills dealing with high-level waste disposal, the low-level waste disposal provisions were split out of the larger bills and enacted into law.

The States responded promptly to passage of the Low-Level Policy Act. They have organized themselves into six regional groups: the Northeast, Southeast, Midwest, Central, Northwest, and Rocky Mountain regions. Only two States, California and Texas, have so far decided not to join a regional compact and to pursue the course of establishing their own low-level disposal site. Compacts have been negotiated in each of the six regions, and most have been introduced in or ratified by the various State legislatures. Two of the compacts, the Northwest and the Central States, have already been submitted to Congress for its approval. S. 274, a bill to grant congressional consent to the Northwest compact, was introduced by Senator GORTON on January 27 of this year. Senator DOLE recently introduced S. 1581, granting congressional consent to the Central States compact, on June 29. These bills have been referred to the Judiciary Committee which, pursuant to the Senate rules, has jurisdiction over "interstate compacts generally." Both are being held at full committee. On the House side, similar consent legislation has been introduced by Congressman AKAKA (H.R. 1012) and Congressman GLICKMAN (H.R. 3002). These bills have been referred to the Energy and Commerce Committee and to the Interior Committee. Significant progress has been made in the other three regions as well. The Rocky Mountain compact has been ratified by all member States except Arizona, and it is my understanding that consent legislation will be introduced in Congress shortly after the August recess. The Midwest compact has been ratified by four States, with the Northeast compact having been approved by three States.

Mr. President, the Judiciary Committee began hearings on these compacts some months ago. A field hearing which focused on the provisions of the Northwest compact was held in Seattle, Wash., on November 9, 1982. In March of this year, I chaired an oversight hearing on the status of all the low-level waste compacts and on various issues which have arisen during the negotiation and ratification process. Testimony was heard from representatives of each of the regions, as well as from affected Government agencies, from low-level waste generators, and from environmental groups. Gov. John V. Evans of Idaho testified on behalf of the National Governors' Association, and several State legislators appeared on behalf of the National Conference of State Legislators. Further hearings may be held this fall, the first of which is likely to be a field hearing in South Carolina focusing on the provisions of the Southeast compact. Shortly after completion of these hearings, I expect that the committee will begin markup on the various consent bills pending before it at that time.

For those of my colleagues who may be new to this issue, let me briefly explain what low-level waste is. Low-level radioactive waste is usually defined by reference to what is not low-level waste. The Policy Act, for example, defines low-level waste as "radioactive waste not classified as high-level radioactive waste, transuranic waste, spent fuel, or byproduct material as defined

in section 11e.(2) of the Atomic Energy Act of 1954." Thus, the simpler terms, low-level waste is material which contains relatively low concentrations of radioactive elements. Low-level waste is produced in all 50 States although the amounts generated in each State vary significantly. The primary generators of low-level waste include nuclear power reactors, industry, hospitals, research institutions, and the Federal Government, with the largest single source being nuclear reactors. Low-level waste also exists in numerous forms, such as contaminated machinery, clothing, plastic gloves, paper towels, sludges, liquids, and animal carcasses. Low-level waste, packaged in barrels or boxes, is placed in long trenches, each section of which is covered by dirt as it is filled. These trenches are then carefully monitored to detect and prevent any release of radioactivity into the environment. Low-level disposal sites are licensed by the States if the host State is an agreement State and by the Nuclear Regulatory Commission if it is not. As I indicated earlier, there are currently three commercial sites accepting low-level waste—one located near Hanford, Wash.; a second near Beatty, Nev.; and a third near Barnwell, S.C. Almost all waste is currently shipped to either the Hanford or Barnwell sites.

Mr. President, it is of vital importance that Congress promptly consider and consent to these compacts. Approval of the compacts would allow the States to begin the actual process of siting, constructing, and licensing new sites for their respective regions. Development of a regional system of disposal sites is the only way in which the burden of low-level waste disposal will be equitably divided. For too long, Washington, Nevada, and South Carolina have shouldered the responsibility for disposing of waste generated by the entire Nation. I cannot emphasize too strongly the depth of feeling in my State that the status quo is no longer acceptable. The compacting process, which I helped to initiate in 1980, offers the best means of resolving the institutional and political issues pertaining to disposal of low-level radioactive waste.

Mr. President, I ask unanimous consent that a copy of a letter to me from Gov. Richard W. Riley of our State and a copy of a letter from Dr. Richard S. Hodes, chairman of the Southeast Interstate Low-Level Radioactive Waste Management Commission, both requesting that I introduce consent legislation for the Southeast compact, be printed in the CONGRESSIONAL RECORD following my remarks. I also ask unanimous consent that a copy of the bill be placed in the CONGRESSIONAL RECORD following my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1749

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of the Congress hereby is given to the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia to enter into the Southeast Interstate Low-Level Radioactive Waste Management Compact. Such compact is substantially as follows:

"SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

"ARTICLE 1

"POLICY AND PURPOSE

"There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Compact. The party states recognize and declare that each state is responsible for providing for the availability of capacity either within or outside the state for disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. They also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis. The party states further recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (Public Law 96-573), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for disposal of such waste. The party states recognize that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to dispose of such waste be properly provided.

"It is the policy of the party states to: enter into a regional low-level radioactive waste management compact for the purpose of providing the instrument and framework for a cooperative effort; provide sufficient facilities for the proper management of low-level radioactive waste generated in the region; promote the health and safety of the region; limit the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region; encourage the reduction of the amounts of low-level waste generated in the region; distribute the costs, benefits, and obligations of successful low-level radioactive waste management equitably among the party states; and ensure the ecological and economical management of low-level radioactive wastes.

"Implicit in the congressional consent to this compact is the expectation by Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

"(1) expeditious enforcement of federal rules, regulations, and laws;

"(2) imposing sanctions against those found to be in violation of federal rules, regulations, and laws;

"(3) timely inspection of their licensees to determine their capability to adhere to such rules, regulations, and laws; and

"(4) timely provision of technical assistance to this compact in carrying out their obligations under the Low-Level Radioactive Waste Policy Act, as amended.

"ARTICLE 1

"DEFINITIONS

"As used in this compact, unless the context clearly requires a different construction:

"(1) 'Commission' or 'Compact Commission' means the Southeast Interstate Low-Level Radioactive Waste Management Commission.

"(2) 'Facility' means a parcel of land, together with the structure, equipment, and improvements thereon or appurtenant thereto, which is used or is being developed for the treatment, storage, or disposal of low-level radioactive waste.

"(3) 'Generator' means any person who produces or processes low-level radioactive waste in the course of, or as an incident to, manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity. This does not include persons who provide a service to generators by arranging for the collection, transportation, storage, or disposal of wastes with respect to such waste generated outside the region.

"(4) 'High-level waste' means irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, and solids into which such liquid wastes have been converted, and other high-level radioactive waste as defined by the U.S. Nuclear Regulatory Commission.

"(5) 'Host state' means any state in which a regional facility is situated or is being developed.

"(6) 'Low-level radioactive waste' or 'waste' means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11 e. of the Atomic Energy Act of 1954, or as may be further defined by federal law or regulation.

"(7) 'Party state' means any state which is a signatory party to this compact.

"(8) 'Person' means any individual, corporation, business enterprise, or other legal entity (either public or private).

"(9) 'Region' means the collective party states.

"(10) 'Regional facility' means (1) a facility as defined in this article which has been designated, authorized, accepted, or approved by the Commission to receive waste or (2) the disposal facility in Barnwell County, South Carolina, owned by the State of South Carolina and as licensed for the burial of low-level radioactive waste on July 1, 1982, but in no event shall this disposal facility serve as a regional facility beyond December 31, 1992.

"(11) 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any other territorial possession of the United States.

"(12) 'Transuranic wastes' means waste material containing transuranic elements with contamination levels as determined by the regulations of (1) the U.S. Nuclear Regulatory Commission or (2) any host state, if it is an agreement state under section 274 of the Atomic Energy Act of 1954.

"(13) 'Waste management' means the storage, treatment, or disposal of waste.

"ARTICLE 3

"RIGHTS AND OBLIGATIONS

"The rights granted to the party states by this compact are additional to the rights enjoyed by sovereign states, and nothing in this compact shall be construed to infringe upon, limit, or abridge those rights.

"(A) Subject to any license issued by the U.S. Nuclear Regulatory Commission or a host state, each party state shall have the right to have all wastes generated within its borders stored, treated, or disposed of, as applicable, at regional facilities and, additionally, shall have the right of access to facilities made available to the region through agreements entered into by the Commission pursuant to Article 4 (E)(9). The right of access by a generator within a party state to any regional facility is limited by its adherence to applicable state and federal law and regulation.

"(B) If no operating regional facility is located within the borders of a party state and the waste generated within its borders must therefore be stored, treated, or disposed of at a regional facility in another party state, the party state without such facilities may be required by the host state or states to establish a mechanism which provides compensation for access to the regional facility according to terms and conditions established by the host state or states and approved by a two-thirds vote of the Commission.

"(C) Each party state must establish the capability to regulate, license, and ensure the maintenance and extended care of any facility within its borders. Host states are responsible for the availability, the subsequent post-closure observation and maintenance, and the extended institutional control of their regional facilities in accordance with the provisions of Article 5(B)

"(D) Each party state must establish the capability to enforce any applicable federal or state laws and regulations pertaining to the packaging and transportation of waste generated within or passing through its borders.

"(E) Each party state must provide to the Commission on an annual basis any data and information necessary to the implementation of the Commission's responsibilities. Each party state shall establish the capability to obtain any data and information necessary to meet its obligation.

"(F) Each party state must, to the extent authorized by federal law, require generators within its borders to use the best available waste management technologies and practices to minimize the volumes of waste requiring disposal.

"ARTICLE 4

"THE COMMISSION

"(A) There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Commission ('Commission' or 'Compact Commission'). The Commission shall consist of two voting members from each party state to be appointed according to the laws of each state. The appointing authorities of each state must notify the Commission in writing of the identity of its members and any alternates. An alternate may act on behalf of the member only in the member's absence.

"(B) Each Commission member is entitled to one vote. No action of the Commission shall be binding unless a majority of the total membership cast their vote in the affirmative, or unless a greater than majority vote is specifically required by any other provision of this compact.

"(C) The Commission must elect from among its members a presiding officer. The Commission shall adopt and publish, in convenient form, bylaws which are consistent with this compact.

"(D) The Commission must meet at least once a year and also meet upon the call of the presiding officer, by petition of a majority of the party states, or upon the call of a host state. All meetings of the Commission must be open to the public.

"(E) The Commission has the following duties and powers:

"(1) To receive and approve the application of a nonparty state to become an eligible state in accordance with the provisions of Article 7(B).

"(2) To receive and approve the application of a nonparty state to become an eligible state in accordance with the provisions of Article 7(C).

"(3) To submit an annual report and other communications to the Governors and to the presiding officer of each body of the legislature of the party states regarding the activities of the Commission.

"(4) To develop and use procedures for determining, consistent with consideration for public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region.

"(5) To provide the party states with reference guidelines for establishing the criteria and procedures for evaluating alternative locations for emergency or permanent regional facilities.

"(6) To develop and adopt, within one year after the Commission is constituted as provided in Article 7(D) procedures and criteria for identifying a party state as a host state for a regional facility as determined pursuant to the requirements of this article. In accordance with these procedures and criteria, the Commission shall identify a host state for the development of a second regional disposal facility within three years after the Commission is constituted as provided for in Article 7(D), and shall seek to ensure that such facility is licensed and ready to operate as soon as required but in no event later than 1991.

"In developing criteria, the Commission must consider the following: the health, safety, and welfare of the citizens of the party states; the existence of regional facilities within each party state; the minimization of waste transportation; the volumes and types of wastes generated within each party state; and the environmental, economic, and ecological impacts on the air, land, and water resources of the party states.

"The Commission shall conduct such hearings, require such reports, studies, evidence, and testimony, and do what is required by its approved procedures in order to identify a party state as a host state for a needed facility.

"(7) In accordance with the procedures and criteria developed pursuant to Section (E)(6) of this Article, to designate, by a two-thirds vote, a host state for the establishment of a needed regional facility. The Commission shall not exercise this authority unless the party states have failed to voluntarily pursue the development of such facility. The Commission shall have the authority to revoke the membership of a party state that willfully creates barriers to the siting of a needed regional facility.

"(8) To require of and obtain from party states, eligible states seeking to become party states, and nonparty states seeking to become eligible states, data and information necessary to the implementation of Commission responsibilities.

"(9) Notwithstanding any other provision of this compact, to enter into agreements with any person, state, or similar regional body or group of states for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. The authorization to import requires a two-thirds majority vote of the Commission, including an affirmative vote of both representatives of a host state in which any affected regional facility is located. This shall be done only after an assessment of the affected facility's capability to handle such wastes.

"(10) To act or appear on behalf of any party state or states, only upon written request of both members of the Commission for such state or states as an intervenor or party in interest before Congress, state legislatures, any court of law, or any federal, state, or local agency, board, or commission which has jurisdiction over the management of wastes. The authority to act, intervene, or otherwise appear shall be exercised by the Commission, only after approval by a majority vote of the Commission.

"(11) To revoke the membership of a party state in accordance with Article 7(F).

"(F) The Commission may establish any advisory committees as it deems necessary for the purpose of advising the Commission on any matters pertaining to the management of low-level radioactive waste.

"(G) The Commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall serve at the Commission's pleasure irrespective of the civil service, personnel, or other merit laws of any of the party states or the federal government and shall be compensated from funds of the Commission. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out such functions as may be assigned to it by the Commission. If the Commission has a headquarters it shall be in a party state.

"(H) Funding for the Commission must be provided as follows:

"(1) Each eligible state, upon becoming a party state, shall pay twenty-five thousand dollars to the Commission which shall be used for costs of the Commission's services.

"(2) Each state hosting a regional disposal facility shall annually levy special fees or surcharges on all users of such facility, based upon the volume of wastes disposed of at such facilities, the total of which:

"(a) must be sufficient to cover the annual budget of the Commission;

"(b) must represent the financial commitments of all party states to the Commission; and

"(c) must be paid to the Commission;

Provided, however, That each host state collecting such fees or surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection and that the remainder be sufficient only to cover the approved annual budgets of the Commission.

"(3) The Commission must set and approve its first annual budget as soon as practicable after its initial meeting. Host states for disposal facilities must begin imposition of the special fees and surcharges provided for in this section as soon as practicable after becoming party states and must remit to the Commission funds resulting from collection of such special fees and surcharges within sixty days of their receipt.

"(I) The Commission must keep accurate accounts of all receipts and disbursements. An independent certified public accountant shall annually audit all receipts and disbursements of Commission funds and submit an audit report to the Commission.

The audit report shall be made a part of the annual report of the Commission required by Article 4(E)(3).

"(J) The Commission may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state, or the United States, or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount, and condition, if any, attendant upon any donation or grant accepted pursuant to this section, together with the identity of the donor, grantor, or lender shall be detailed in the annual report to the Commission.

"(K) The Commission is not responsible for any costs associated with:

"(1) the creation of any facility;

"(2) the operation of any facility;

"(3) the stabilization and closure of any facility;

"(4) the post-closure observation and maintenance of any facility; or

"(5) the extended institutional control, after post-closure observation and maintenance of any facility.

"(L) As of January 1, 1986, the management of wastes at regional facilities is restricted to wastes generated within the region, and to wastes generated within nonparty states when authorized by the Commission pursuant to the provisions of this compact. After January 1, 1986, the Commission may prohibit the exporation of waste from the region for the purposes of management.

"(M)(1) The Commission herein established is a legal entity separate and distinct from the party states capable of acting in its own behalf and is liable for its actions. Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not personally be liable for action taken by them in their official capacity.

"(2) Except as specifically provided in this compact, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act, omission, course of conduct, or on account of any causal or other relationships. Generators and transporters of wastes and owners and operators of sites shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto.

"ARTICLE 5

"DEVELOPMENT AND OPERATION OF FACILITIES

"(A) Any party state which becomes a host state in which a regional facility is operated shall not be designated by the Compact Commission as a host state for an additional regional facility until each party state has fulfilled its obligation, as determined by the Commission, to have a regional facility operated within its borders.

"(B) A host state desiring to close a regional facility located within its borders may do so only after notifying the Commission in writing of its intention to do so and the reasons therefor. Such notification shall be given to the Commission at least four years prior to the intended date of closure. Notwithstanding the four-year notice requirement herein provided, a host state is not prevented from closing its facility or establishing conditions of its use and operations as necessary for the protection of the health and safety of its citizens. A host state may terminate or limit access to its regional facility if it determines that Congress has materially altered the conditions of this compact.

"(C) Each party state designated as a host state for a regional facility shall take appropriate steps to ensure that an application for a license to construct and operate a facility of the designated type is filed with and issued by the appropriate authority.

"(D) No party state shall have any form of arbitrary prohibition on the treatment, storage, or disposal of low-level radioactive waste within its borders.

"ARTICLE 6

"OTHER LAWS AND REGULATIONS

"(A) Nothing in this compact shall be construed to:

"(1) Abrogate or limit the applicability of any Act of Congress or diminish or otherwise impair the jurisdiction of any federal agency expressly conferred thereon by the Congress.

"(2) Abrogate or limit the regulatory responsibility and authority of the U.S. Nuclear Regulatory Commission or of an agreement state under section 274 of the Atomic Energy Act of 1954 in which a regional facility is located.

"(3) Make inapplicable to any person or circumstance any other law of a party state which is not inconsistent with this compact.

"(4) Make unlawful the continued development and operation of any facility already licensed for development or operation on the date this compact becomes effective, except that any such facility shall comply with Article 3, Article 4, and Article 5 and shall be subject to any action lawfully taken pursuant thereto.

"(5) Prohibit any storage or treatment of waste by the generator on its own premises.

"(6) Affect any judicial or adminstrative proceeding pending on the effective date of this compact.

"(7) Alter the relations between, and the respective internal responsibilities of, the government of a party state and its subdivisions.

"(8) Affect the generation, treatment, storage, or disposal of waste generated by the atomic energy defense activities of the Secretary of the United States Department of Energy or federal research and development activities as defined in Public Law 96-573.

"(9) Affect the rights and powers of any party state and its political subdivisions to regulate and license any facility within its borders or to affect the rights and powers of any party state and its political subdivisions to tax or impose fees on the waste managed at any facility within its borders.

"(B) No party state shall pass any law or adopt any regulation which is inconsistent with this compact. To do so may jeopardize the membership status of the party state.

"(C) Upon formation of the compact no law or regulation of a party state or of any subdivision or instrumentality thereof may be applied so as to restrict or make more inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

"(D) Restrictions of waste management of regional facilities pursuant to Article 4 shall be enforceable as a matter of state law.

"ARTICLE 7

"ELIGIBLE PARTIES; WITHDRAWAL; REVOCATION; ENTRY INTO FORCE; TERMINATION

"(A) This compact shall have as initially eligible parties the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

"(B) Any state not expressly declared eligible to become a party state to this compact in Section (A) of this Article may petition the Commission, once constituted, to be declared eligible. The Commission may establish such conditions as it deems necessary and appropriate to be met by a state wishing to become eligible to become a party state to this compact pursuant to such provisions of this section. Upon satisfactorily meeting the conditions and upon the affirmative vote of two-thirds of the Commission, including the affirmative vote of both representatives of a host state in which any affected regional facility is located, the petitioning state shall be eligible to become a party state to this compact and may become a party state in the manner as those states declared eligible in Section (A) of this Article.

"(C) Each state eligible to become a party state to this compact shall be declared a party state upon enactment of this compact into law by the state and upon payment of the fees required by Article 4(H)(1). The Commission is the judge of the qualifications of the party states and of its members and of their compliance with the conditions and requirements of this compact and the laws of the party states relating to the enactment of this compact.

"(D)(1) The first three states eligible to become party states to this compact which enact this compact into law and appropriate the fees required by Article 4(H)(1) shall immediately, upon the appointment of their Commission members, constitute themselves as the Southeast Low-Level Radioactive Waste Management Commission; shall cause legislation to be introduced in Congress which grants the consent of Congress to this compact; and shall do those things necessary to organize the commission and implement the provisions of this compact.

(2) All succeeding states eligible to become party states to this compact shall be declared party states pursuant to the provisions of Section (C) of this Article.

(3) The consent of Congress shall be required for the full implementation of this compact. The provisions of Article 5(D) shall not become effective until the effective date of the import ban authorized by Article 4(L) as approved by Congress. Congress may by law withdraw its consent only every five years.

(E) No state which holds membership in any other regional compact for the management of low-level radioactive waste may be considered by the Compact Commission for eligible state status or party state status.

(F) Any party state which fails to comply with the provisions of this compact or to fulfill the obligations incurred by becoming a party state to this compact may be subject to sanctions by the Commission, including suspension of its rights under this compact and revocation of its status as a party state. Any sanction shall be imposed only upon the affirmative votes of at least two-thirds of the Commission members. Revocation of party state status may take effect on the date of the meeting at which the Commission approves the resolution imposing such sanction, but in no event shall revocation take effect later than ninety days from the date of such meeting. Rights and obligations incurred by being declared a party state to this compact shall continue until the effective date of the sanction imposed or as provided in the resolution of the Commission imposing the sanction.

"The Commission must, as soon as practicable after the meeting at which a resolu-

tion revoking status as a party state is approved, provide written notice of the action, along with a copy of the resolution, to the Governors, the Presidents of the Senates, and Speakers of the Houses of Representatives of the party states, as well as chairmen of the appropriate committees of Congress.

"(G) Any party state may withdraw from the compact by enacting a law repealing the compact; provided, that if a regional facility is located within such a state, such regional facility shall remain available to the region for four years after the date the Commission receives notification in writing from the governor of such party state of the rescission of the compact. The Commission, upon receipt of the notification, shall as soon as practicable provide copies of such notification to the Governors, the Presidents of the Senates, and and the Speakers of the Houses of Representatives of the party states as well as the chairmen of the appropriate committees of Congress.

"(H) This compact may be terminated only by the affirmative action of Congress or by the recision of all laws enacting the compact in each party state.

"ARTICLE 8

"PENALTIES

"(A) Each party state, consistently with its own law, shall prescribe and enforce penalties against any person not an official of another state for violation of any provisions of this compact.

"(B) Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws and regulations can result in the imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.

"ARTICLE 9

"SEVERABILITY AND CONSTRUCTION

"The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared by a court of competent jurisdiction to be contrary to the constitution of any participating state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person, or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. The provisions of this compact shall be liberally construed to give effect to the purposes thereof.".

SEC. 2. Nothing contained in this Act or in the compact consented to in this Act may be construed as impairing or otherwise affecting in any manner any right or jurisdiction of the United States with respect to the region that is the subject of such compact.

SEC. 3. The right of the Congress to alter, amend, or repeal this Act is expressly reserved.

SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMMISSION,
Atlanta, Ga., July 26, 1983.

Hon. J. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

MY DEAR SENATOR THURMOND: On July 21, the Southeast Interstate Low-Level Radioactive Waste Management Commission held its first meeting in Atlanta, Georgia. As of this date, seven of the eight eligible states in the Southeast region, Alabama, Florida, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia, had fully ratified the Southeast Compact. Georgia ratified an earlier version of the Southeast Compact in 1982 and is expected to approve amendments to this compact next year.

At this first meeting, the Commission elected officers, organized working subcommittees, and approved a draft Congressional consent bill for the Southeast Compact. Ms. Sara S. Rogers of your staff attended this meeting and was very helpful in describing the Congressional consent process to the Commissioners.

I am writing you to request that you introduce in the United States Senate legislation for the enclosed Southeast Compact. I am also writing your colleague, Congressman Butler C. Derrick, to request that he introduce the same legislation in the United States House of Representatives.

If you agree to this request, I will ask the governors of the member states of the Southeast Compact to contact the members of their Congressional delegations and ask them to co-sponsor this legislation with your consent.

I have asked Senator Joseph Gartlan, Commissioner from the Commonwealth of Virginia, and Dr. John Stucker, Commissioner from the State of South Carolina, to represent the Commission in working with your staff and the Congressional delegations from the Southeastern states in securing Congressional consent for the Southeast Compact.

On behalf of the Southeast Commission, I want to express our appreciation for the leadership which you have shown on this issue in the past. As a result of your efforts, the regional compact approach to low-level waste management, first proposed by Governor Richard W. Riley, became national policy in the 1980 Low-Level Waste Policy Act. We, the Southeastern states, are prepared to continue our efforts toward implementation of this law.

We are hopeful that the Congress will give expeditious consent to the Southeast Compact and the other low-level waste compacts which have been and will be introduced. We are committed to supporting you in whatever way we can to accomplish this goal.

Very truly yours,

RICHARD S. HODES, M.D.,
Chairman.

STATE OF SOUTH CAROLINA,
OFFICE OF THE GOVERNOR,
Columbia, S.C., July 25, 1983.

Hon. J. STROM THURMOND,
U.S. Senate, Russell Building, Washington, D.C.

DEAR STROM: Last Thursday, July 21, the Southeast Interstate Low Level Waste Compact Commission held its first meeting. At this meeting, the Commission approved a draft Congressional consent bill for the Southeast Compact.

Very soon you will be receiving a letter from Dr. Richard S. Hodes, Chairman of the Commission, enclosing a copy of this draft consent bill and asking you to sponsor its introduction in the United States Senate. A similar request will be made of Congressman Derrick on the House side.

I would like to personally request that you respond positively to Dr. Hodes' request. The Compact which Dr. Hodes is sending you represents diligent efforts on the part of South Carolina and the other member states of our region to fashion a viable framework for carrying out the Low Level Waste Policy Act of 1980.

Moreover, it represents a commitment that the legislative leadership of the General Assembly and I have made to the people of South Carolina to see that our disposal site is returned to its originally intended purpose as a regional site and that another state in our region will take up this responsibility by 1992, so that South Carolinians no longer have to see themselves as the only ones who have to bear the burden of disposing of our region's and the nation's low level radioactive waste.

It was your leadership which helped to make this regional approach to low level waste national policy in the 1980 Act. I urge you to continue your leadership in seeking consent for the Southeast Compact as well as the other Compacts which have been and will be submitted to Congress for consent.

On behalf of the other state officials in South Carolina, let me say that we stand ready to assist you in this endeavor. If there is anything I can do to expedite this process, please do not hesitate to contact me.

Yours sincerely,

RICHARD W. RILEY.

Mr. HOLLINGS. Mr. President, I am pleased to cosponsor this important piece of legislation. Establishing the Southeast compact is an important milestone in our efforts to deal with the problem of low-level nuclear waste.

In my view, this is a fair and effective compact.

In the first place, it follows the principle that Congress set forth in 1980: each State, and by inference each region, is responsible for managing its own low-level waste. The eight Southeast States have accepted their part of the responsibility and formed this compact. In return, the 1980 law provides that no State—including no Southeast State—need accept waste from outside its compact area after January 1, 1986. This is a sound and equitable approach.

Second, this compact is fair to South Carolina. As the only State in the Southeast with an existing low-level disposal site, South Carolina is central to this compact. My State is willing to take the region's low-level waste for a while longer. But in return, South Carolina will receive financial compensation from other Southeast States. More importantly, the compact explicitly calls for a second site outside South Carolina to be picked within 3 years and to be licensed and ready to operate no later than 1991. And in no event is the existing Barnwell, S.C., site to serve as the region's disposal facility beyond December 31, 1992. This arrangement is a big improvement over today's situation, where South Carolina ends up taking nuclear garbage from all over the Eastern United States.

Mr. President, I intend to review the implementation of this compact care-

fully. In particular, I want to examine all the safety questions that have been raised recently about the existing Barnwell facility. But I am very satisfied with the compact itself. It is a significant improvement over the present situation, and it enjoys broad bipartisan support in my State and the entire Southeast. I urge my colleagues in the Senate to support the bill of ratification.

By Mr. HEINZ (for himself, Mr. GARN, Mr. TOWER, and Mr. MATTINGLY):

S. 1750. A bill to effectuate the congressional directive that accounts established under section 327 of the Garn-St Germain Depository Institutions Act of 1982 be directly equivalent and competitive with money market mutual funds; to the Committee on Banking, Housing, and Urban Affairs.

COMPETITIVE SAVINGS INCENTIVE ACT

Mr. HEINZ. Mr. President, today with my colleagues Senators GARN, TOWER, and MATTINGLY, I am introducing legislation which would require the payment of earnings on the reserves held by the Federal Reserve System.

In the midst of our struggle to achieve a full economic recovery no one would advocate a policy that discourages savings, taxes, and investment itself and not the income from the investment, drives funds out of local depository institutions and makes monetary policy more difficult to execute. Yet such a policy—the failure to pay depositors a return on the portion of their money that the Federal Reserve Board requires be held without interest as reserves—is already in place.

When Congress achieved the great success for consumers last year by ordering the creation of deposit accounts for small savers that bear a market rate of interest, the nonpayment of earnings on federally mandated reserves requirements became a tax on the saver, not on the institution.

The Board of Governors of the Federal Reserve has endorsed the payment of interest on all reserves, but has advised that this be done gradually in order to minimize any cost to the Treasury. Our legislation adopts this gradual approach because it would only apply to reserves held against new accounts authorized under the Garn-St Germain Act of 1982, namely MMDA, Super NOW, and any other new transaction accounts, as well as to credit union accounts.

All depository institutions—banks, savings and loans, mutual or stock savings banks, and credit unions—would benefit from this bill, because it will make them more competitive and better able to attract deposits from their local communities which they can then relend in those local communities. Consumers at all institutions will benefit, because they will earn a higher yield on their deposits. Our bill removes a major discouragement to savings, and will enable people to obtain the best rate in the most convenient way, at their local depository institutions.

I urge my colleagues to support this measure which will aid the small savers of this country and our entire economy. It is my sincere hope, and that of Senator GARN who has joined me today in introducing this bill, that the Senate will take prompt action on this measure.

I ask unanimous consent that letters endorsing this legislation and the companion bill in the House introduced by Congressman BARNARD from the following groups be included in the RECORD:

Federal Reserve Board.

Conference of State Bank Supervisors.

National Association of Federal Credit Unions.

National Association of Mutual Savings Banks.

U.S. League of Savings Associations.

National Savings and Loan League.

American Bankers Association.

Consumer Bankers Association.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C., June 20, 1983.

Hon. JOHN HEINZ,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HEINZ: I have now had an opportunity to discuss with the Board issues raised by the legislation introduced by you last year, S. 3059, requiring payment of interest on reserve balances held against deposit accounts that are directly competitive with money market funds. We feel that as a general matter payment of a market-related interest rate on reserve balances—whether held against deposit accounts specified in the proposed bill or against all deposit accounts requiring reserves—is worthwhile on grounds of equity and also on the more technical ground that it will work to discourage development of transactions-type accounts outside the depository system. Such accounts outside banks and thrift institutions would not under current law be subject to reserve requirements of the Federal Reserve, and their proliferation would complicate the implementation of monetary policy. However, the Board also generally believes that payment of interest on reserves should be phased in over time, taking due account of the potentially adverse effects on Treasury revenues under the current difficult fiscal conditions and to minimize complications for monetary policy associated with transition to the new way reserves would be treated by depository institutions if they were interest-bearing.

The bill in question would limit interest on reserve balances to money market deposit accounts (MMDAs), super-NOW accounts, and also, if our reading of the your bill is correct, regular NOW accounts. The payment of interest on reserve balances held against MMDAs—only the non-personal portion of which is subject to reserve requirements—would be a step favored by the Board at this time.

Paying interest on reserve balances held against super-NOW accounts would make them more competitive with money market funds, although this might add further to uncertainties in interpreting the monetary aggregates, particularly M1, by causing a shift of funds now held in the form of MMDAs into super-NOW accounts. With interest paid on reserve balances, depositors would be able to receive as good a yield on super-NOW accounts on MMDAs—abstracting from service charges depository institutions might impose—and the former would also have the capacity for unlimited transfers by check. But payment of interest on super-NOW reserve balances does open up the issue of whether interest should also be paid on reserve balances of all transactions accounts. As deregulation proceeds, it will be difficult to distinguish super-NOW accounts functionally from regular NOW accounts. Paying interest on all NOW account reserve balances—and perhaps at some point extended to balances held against demand deposits generally—would involve a fairly significant drain on Treasury revenues. Thus, while the Board as a matter of principle favors payment of interest on all reserve balances, the question of whether interest should be paid on reserve balances held against regular NOW accounts, or transactions accounts more generally, should be judged additionally from the perspective of overall fiscal considerations and equity in the raising of revenue.

As a final point, the Board feels that for technical monetary control reasons it would be better to pay interest on reserve balances on a more current basis than the one quarter lag in your legislation. There would probably be less potential for complicating monetary control if the law gave the Board discretion to set a rate based on or related to market rates, or—if it were felt that more specificity was desirable—based on the average yield on, say, the System's Treasury bill portfolio in a current month.

Sincerely,

PAUL.

CONFERENCE OF STATE
BANK SUPERVISORS,
Washington, D.C., June 24, 1983.

Hon. JOHN HEINZ,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR HEINZ: The issue of interest payments on reserves required in conjunction with Money Market Deposit Accounts and other recently established accounts has been raised in the context of proposed legislation.

CSBS previously established its position on this matter in testimony on S. 353, the Federal Reserve Modernization Act of 1979, a precursor to enactment of the Monetary Control Act. At that time, CSBS stated:

"We believe there should be an average reduction of about one-fourth in member bank reserve requirements, some payment of interest on reserves or some combination of the two. Additionally, if explicit pricing were to be implemented and/or float treated significantly different than now, levels of reserves and/or payment of interest on reserves should be adjusted accordingly so that the net benefit to member banks would be equivalent to a reduction of one-fourth in reserves."

While our statement endorsed no specific formula for payment of interest on reserves, CSBS did strongly urge "Congress and the

Fed, in the spirit of equitable treatment of banks, to reduce significantly the unduly high reserve tax now imposed on member banks and their customers."

CSBS favored payment of interest on reserves as part of a program to reduce unreasonable membership costs so as to greatly alleviate the Fed's membership problem. We continue to believe that optional Fed membership combined with efforts to reduce membership costs is preferable to universal mandatory reserves.

In addition, bank customers would benefit from higher interest rates and banks would better be able to compete with non-depository institutions, which do not hold reserves at the Fed. As a result of this competition, increases in super NOW accounts would both strengthen local banks and increase their ability to lend within their own community.

For these reasons, CSBS continues to believe that payment of interest on all or part of the reserves required to be held at the Fed is an idea worthy of support.

Sincerely,

LAWRENCE E. KREIDER,
Executive Vice President-Economist.

NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS,
Washington, D.C., June 20, 1983.

Hon. DOUG BARNARD,
Cannon House Office Building, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN BARNARD: On behalf of the National Association of Federal Credit Unions (NAFCU), I would like to take this opportunity to thank you for introducing H.R. 1013, a bill which if enacted would require the Federal Reserve Bank to pay interest on reserves posted against Money Market Deposit Accounts and Super Now Accounts.

It has been the policy of this association to favor the payment of interest on all reserves posted with the Fed. We appreciate the steps taken in the Garn-St Germain Act to make less burdensome the reporting and reserving requirements for the smaller credit unions, but we still believe that a more equitable system would be to pay interest on reserves posted with the Fed. Sterile reserves constitute a hidden tax imposed upon the financial institution affected, and this cost of doing business must ultimately be passed on to the consumer.

It is reasonable to assume, given the competitive conditions of financial markets, that interest payments by the Fed on reserves would be reflected in the marketplace in the form of lower loan rates for borrowers and higher earning rates for savers. Accordingly, there would be a smaller amount of deductions from taxable personal income representing interest payments on loans, and greater interest income earned by savers. This may well off-set any additional costs to the Treasury.

Congressman Barnard, we feel H.R. 1013 is a step in the right direction towards NAFCU's adopted policy of earning interest on all posted reserves. We support your efforts and will be glad to work with you and your colleagues for enactment of this legislation.

Sincerely,

JOHN J. HUTCHINSON,
President.

NATIONAL ASSOCIATION OF MUTUAL SAVINGS BANKS,
Washington, D.C., June 21, 1983.

Hon. DOUG BARNARD,
House of Representatives,
Washington, D.C.

DEAR MR. BARNARD: This letter is prompted by legislation which you have introduced, H.R. 1013, to authorize the Federal Reserve to pay interest on reserves held against money market deposit accounts (MMDAs). The National Association of Mutual Savings Banks is very pleased to endorse this legislation on both philosophical and practical grounds.

Consistent with the deregulatory philosophy which has been reshaping the nation's financial markets over the last several years, both depository institutions and their customers are adjusting to explicit pricing for the use of funds. A major anachronism in this trend toward increased market reliance is the federal law requiring depository institutions to set aside reserves in non-earning assets.

With respect to MMDAs, which constitute a large and still growing segment of our liability structure, there also arise competitive considerations since money market mutual funds are not subject to federal reserve requirements. Savings banks and other depository institutions are required to reserve against nonpersonal MMDAs at 3 percent, and at 12 percent on so-called Super NOW accounts when such accounts exceed $26 million per institution. Thus, for the very practical reason of being able to improve the marketability of these accounts through the return which depositors may earn, it would be advantageous to eliminate the current requirement for sterile reserves.

Paying interest on reserve requirements is a concept that has already been fully explored in prior congressional hearings, and which enjoys significant support (see, Hearings on the Monetary Policy Improvements Act of 1979, 96th Cong., 1st Sess., Feb. 1979). We note that the Federal Reserve Board itself has, in recent correspondence to Del. Walter E. Fauntroy, the chairman of the House Domestic Monetary Policy Subcommittee, expressed its endorsement of the proposal to pay interest on reserve balances. Such a step would also conform with the original congressional intent which led to the creation of these accounts by the Garn-St Germain Depository Institutions Act of 1982.

In addition to our general endorsement of the legislation, we would like to comment on one technical aspect to the legislation. Specifically, we would like to recommend a change that would alter subsection (a) of the legislation to delete the word "mutual" before "savings bank" in order to ensure that savings banks doing business in stock form would not be excluded from the benefits of the legislation. Over the course of the last eighteen months, a number of savings banks have converted from mutual to stock form, and there have also been a large number of conversions from savings and loan associations to federal savings banks, some of which involve stock institutions. We believe that the foregoing suggestion is purely technical in nature and would not alter the substance of the legislation.

Again, we would like to emphasize our support for H.R. 1013, and assure you of our commitment to work for its prompt and favorable consideration by the Congress.

Sincerely yours,

JAMES J. BUTERA,
Senior Vice President and Director.

NATIONAL SAVINGS AND LOAN LEAGUE,
Washington, D.C., June 20, 1983.

Hon. DOUG BARNARD,
Cannon House Office Building, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN BARNARD: On behalf of the officers and members of the National Savings and Loan League, I want to thank you for introducing legislation providing for the payment of interest on reserves held by the Federal Reserve System against MMDA and Super-NOW account balances. These accounts were authorized by the DIDC (on instruction from Congress) in order to provide a competitive balance between traditional depository institutions and money market funds. The objective is one the National League supported given the "fact" that statutory limitations on money market funds was politically impossible.

In order for our institutions to be fully competitive with the funds, as Congress intended, they must be relieved of the tax on their raw material represented by the holding of sterile reserves. These reserve balances represent a substantial source of income for the Fed and for the Treasury. How, therefore, can anyone question that they represent a tax on the institutions?

The National League believes that interest should be paid by the Fed on all reserves, but your legislation addresses the most critical area and is the appropriate place to start. We are pleased to support your efforts and offer to assist you in any way we can in gaining enactment of the legislation.

Sincerely yours,

JIM COUSINS.

UNITED STATES LEAGUE OF SAVINGS INSTITUTIONS, WASHINGTON OFFICE,
Washington, D.C., June 20, 1983.

Hon. DOUG BARNARD,
House of Representatives, Washington, D.C.

DEAR MR. BARNARD: The staff of the U.S. League of Savings Institutions has had an opportunity to study the bill you have introduced, H.R. 1013, to require payment of interest by a Federal Reserve bank to financial institutions depositories on the reserves they are required to maintain on their money market deposit (MMDA) and Super-NOW accounts (authorized by regulation pursuant to Section 327 of the St Germain-Garn Depository Institutions Act of 1982). We construe that your bill would be applicable to reserves on NOW accounts as well. Presumably, the legislation would also require the payment of interest on any other account hereafter authorized under the St Germain-Garn law which is directly equivalent to and competitive with money market mutual funds.

The League wholeheartedly supports your effort and the basic thrust of the proposed legislation. If payment of interest on reserves could be expanded to all other accounts on which reserves are required, so much the better.

In principle, the payment of interest on reserve balances is only fair and equitable—particularly in view of competitive accounts, instruments, or investments offered by companies outside the depository institutions' segment of the market—on which no reserve balances are presently required (or even provided for by statute). The yields which financial institutions can offer their customers on MMDA's and Super-NOWs obviously remain lower than they might otherwise be, since the reserve balances maintained in

connection with these accounts remain sterile.

In the course of the legislative process, we would like to retain the opportunity to offer more specific suggestions concerning definitions, coverage, etc.

For now, we support the general thrust of your proposed legislation, and applaud both your initiative and concern for the public interest that financial institution accounts directly competitive with money market mutual funds be made even more competitive.

Sincerely,

ROY G. GREEN.

AMERICAN BANKERS ASSOCIATION,
Washington D.C., June 20, 1983.

Hon. DOUG BARNARD,
U.S. House of Representatives, Washington, D.C.

DEAR DOUG: On January 27, 1983, you introduced legislation that would provide for the payment of interest on reserves on those accounts established under Section 327 of the Garn-St Germain Depository Institutions Act of 1982.

In testimony before the Senate Banking Committee, on May 3, 1983, the American Bankers Association supported the concept of the payment of interest on reserves.

Depository institutions are currently required to hold reserve balances equal to a certain percentage of their transaction and non-personal time deposits. No interest is earned on these balances held at the Federal Reserve. This reduces the interest income of depository institutions and lowers the rate they can afford to pay on deposits.

Since most of the profits of the Federal Reserve are paid to the Treasury, failure to pay interest on reserve balances held at the Federal Reserve has the same effect as a tax on depository institutions, and indirectly, the customers who purchase financial services from them. Moreover, because the cost in reduced income from reserves must be made up through increased income on other bank products and services, a sterile reserve system indirectly maintains artificially high levels of interest rates on loans.

The prior rationale of not paying interest on reserves was due to the fact that these institutions received free services from the Federal Reserve. This, of course, is no longer the case since the Federal Reserve has begun explicitly pricing its services. We are hopeful that similar legislation will be introduced in the Senate.

We stand ready to assist you in any way possible.

Sincerely,

GERALD M. LOWRIE.

THE CONSUMER BANKERS ASSOCIATION,
Arlington, Va., May 18, 1983.

Hon. JOHN HEINZ,
Russell Senate Office Building, Washington, D.C.

DEAR SENATOR HEINZ: At the Senate Banking Committee hearing on May 3, you indicate your intent to reintroduce legislation similar to S. 3059 that would provide for the payment of earnings on sterile reserves held by the Federal Reserve System. As I stated, we favor the payment of earnings and strongly appreciate and support any legislation, regarding this issue, that you introduce. We believe that your approach of limiting the payment to reserves held on the Money Market Deposit Account, the Super NOW Account, and other transactional accounts that DIDC authorizes will lessen the impact on the Treasury. Your approach will also provide for a gradual, non-disruptive transition from sterile reserves to earning reserves, since the bill only applies to new types of accounts. Consumers will also benefit from this approach in two important ways. First, they will either receive higher rates on their deposit accounts or pay lower interest rates on their loans. Second, a competitive Super NOW account, if authorized for businesses by the DIDC, will be an invaluable cash management tool for small businesses, which are generally unable to avail themselves of more sophisticated techniques.

As you know, this bill will provide parity for federally regulated depository institutions with respect to the non-regulated money market mutual funds, as mandated by Congress in last year's Garn-St Germain Act. At today's rates (approximately 8%) we estimate that regulated depository institutions are at a 24-basis-point disadvantage on the MMDA and 109-basis-point disadvantage on the Super NOW Account. Obviously, your bill would create competitive equality.

If the association or its staff can be of any assistance to you, please do not hesitate to call upon us.

Sincerely,

FREDERICK S. HAMMER,
Chairman, Government Relations Committee.

By Mr. CRANSTON:

S. 1751. A bill to amend certain Federal laws to prohibit age discrimination; to the Committee on Labor and Human Resources.

S. 1752. A bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to prohibit age discrimination in the administration of pension plans; to the Committee of Finance.

S. 1753. A bill to amend the Internal Revenue Code of 1954 to provide incentives for part-time and full-time employment of older workers; to the Committee on Finance.

PROMOTING EMPLOYMENT OPPORTUNITIES FOR OLDER WORKERS

Mr. CRANSTON. Mr. President, on January 26, I introduced a comprehensive legislative proposal, S. 2, the proposed "Employment Opportunity for Older Americans Act of 1983." S. 2, derived from legislation I introduced in the 97th Congress, S. 3010, contains a number of provisions aimed at encouraging older workers to remain in the work force, particularly in part-time positions, and stimulating employers to make these opportunities available to older workers. Two of the proposals contained in S. 2—increasing the social security delayed retirement adjustment factor and modifying the earnings limitation—were dealt with in the recently enacted Social Security Amendments of 1983, Public Law 98-21. At the time the social security legislation was before the Senate, I indicated my strong support for those provisions and my intention to reintroduce the remaining provisions of S. 2 in separate bills in order to help facilitate their referral and consideration by the appropriate committees.

I am therefore today introducing, for appropriate reference, the remaining provisions of S. 2 in three separate bills, S. 1751, the proposed "Age Discrimination in Employment and Apprenticeship Amendments of 1983," S. 1752, the proposed "Age Discrimination in Pension Benefits Act of 1983," and S. 1753, the proposed "Older Worker Employment Incentives Act of 1983." I note that my extensive floor statement on S. 2 appeared at pages S115-122 of the daily edition of the CONGRESSIONAL RECORD for January 26, 1983.

IMPORTANT STEP FORWARD

Mr. President, enactment of the two provisions relating to work effort after the normal retirement age contained in the Social Security Amendments of 1983 represents an important and essential step toward encouraging older workers to delay retirement and remain participants in the workforce as long as they desire. The fact that workers who delay their retirements have not received an actuarially fair adjustment in their social security benefits to reflect these additional work years has served as disincentive to continued work. Similarly, the social security earnings limitation provision which required a forfeiture of $1 in social security benefits for every $2 in earned income after a certain annual earnings threshold has made working beyond the normal retirement age significantly less desirable. Public Law 98-21 included provisions which raised the delayed retirement adjustment factor and modified the earnings limitation to provide a benefit loss of $1 for every $3 in earned income, rather than for each $2.

Mr. President, these changes should help substantially in making continued work efforts more desirable to older Americans. There is, however, much more that must be done to reduce other obstacles and fiscal disincentives that discourage older workers—and their employers. The legislation I am introducing today seeks to deal with many of the remaining problems.

NEED FOR NEW POLICIES

Mr. President, at the time I introduced S. 2, I outlined many of the demographic factors which make it imperative that efforts be made to provide older workers with the opportunities and incentives needed to continue in the work force. I will not reiterate all of the data today, but simply point to two important facts which compel action in this area.

First, America is aging. In a few short decades, the number of Americans over 65 will constitute fully one-fifth of the population. These older Americans will be better educated, in better health, and have many more years of active life after 65 than any previous generation.

Second, as difficult as it may be to envision in light of today's unconscionable rates of unemployment, we will soon be entering an era of labor shortages, when the number of new, young workers entering the work force will be declining. Our labor force will need to retain experienced older workers that we now force into retirement. Our Nation will need these older workers if we are to meet the challenges that lie ahead.

It is clear that we must begin now to revise and reform those policies and practices which have discouraged older workers, denied them the opportunity to remain active participants in the economic life of the Nation, and, in many cases, forced them into unwanted dependency and idleness.

A NEW CONCEPT OF RETIREMENT

Mr. President, I believe that it is time that our Nation began revising the basic concept of retirement. Retirement today means a total, abrupt withdrawal from the labor force. One day, an individual is engaged as an active, contributing worker; the next, he or she is faced with a total retirement—complete exclusion from the workplace. This often has a severe, deteriorative impact upon physical and psychological health, taking away from many older Americans that sense of fulfillment and self-sufficiency which comes from productive employment, leaving them with a loss of meaning and worth in their lives and often without sufficient resources to maintain an adequate standard of living.

We should begin to foster a new perspective on retirement, a shift from the concept of an abrupt, total withdrawal from the labor force to one of gradual withdrawal, where older workers are afforded the opportunity, if they choose, to reduce their work pace, shift to less demanding work roles or participate in more flexible work schedules. Part-time employment, in particular, represents an appealing and practical way for older workers to remain in the work force, contributing their skills and experience and supplementing their incomes, yet still allowing them to reduce their work pace.

This new concept—sometimes called phased retirement or gradual retirement—would not only serve the interests of older workers, it would help meet the future needs of the labor force. According to available employment projections, 74 percent of the increase in new employment positions in the next two decades will be in wholesale or retail sales and in the services industries—two fields which currently employ 60 percent of all workers 65 or older. These same industries frequently use part-time employees.

Mr. President, a number of the provisions in my proposal are focused upon encouraging part-time employment opportunities for older workers. It is clear that older workers today desire these work arrangements. A 1981 Harris poll of current workers between the ages of 55 to 64 found that 79 percent would prefer part-time work to complete retirement. Surveys of current retirees disclose equally strong desires to engage in part-time work. We need to develop innovative and creative ways to provide these opportunities.

SUMMARY OF BILLS INTRODUCED

Mr. President, as I stated at the outset, the three bills I am introducing today contained proposals derived from S. 2 which have not yet been acted upon.

S. 1751, AGE DISCRIMINATION IN EMPLOYMENT AND APPRENTICESHIP AMENDMENTS OF 1983

The first bill, S. 1751, the proposed "Age Discrimination in Employment and Apprenticeship Amendments of 1983," would amend the Age Discrimination in Employment Act (ADEA) to extend its protections to all older Americans, not just those under age 70, clarify that under the ADEA an employee benefit plan cannot discriminate on the basis of age, and prohibit age discrimination under the National Apprenticeship Act. This legislation is under the jurisdiction of the Labor and Human Resources Committee.

Mr. President, there are currently several proposals pending in the Senate to remove the age 70 ceiling in the ADEA. The effect of removing the ceiling would be to extend the protection of ADEA to all workers over the age of 40 who are employed in jobs covered by the act, thereby guaranteeing those employees protection against mandatory retirement rules. In 1978, we raised the ceiling from 65 to 70 for most employees and eliminated entirely the mandatory retirement age for Federal employees. Elimination of the ceiling would afford similar protection to employees in the private sector.

Mr. President, my proposal differs from other measures before the Senate in that it would also abolish the exemptions created in 1978 that deny certain categories of workers protection against mandatory retirement rules. In 1978, over my strong objections, exemptions were included in the ADEA to allow colleges and universities to force certain employees—tenured faculty members—to retire at age 65 and to allow businesses to take the same actions with regard to certain executives.

The exemption for universities and colleges, however, expired on July 1, 1982. Thus, under the ADEA today, college professors enjoy the same protections against mandatory retirement before age 70 that every other worker enjoys. Some of the proposals currently pending in the Congress to eliminate the age 70 ceiling would recreate an exemption that would allow universities and colleges to force out tenured employees when they reach age 70. These proposals would also allow continuation of the exemption for businesses which choose to force executives with pension benefits over $27,000 to retire when they reach 65.

My bill does not exclude any category of employees from the protection of the ADEA. I recognize that those employers who seek to retain the freedom to discharge an employee when he or she reaches a certain age truly believe that the circumstances in their particular field warrant special consideration. But, Mr. President, we are dealing with what is a basic civil right—the right to be judged on the basis of individual ability to perform a job. Employment discrimination on the basis of chronological age is just as invidious and unfair as discrimination on the basis of race or sex or religion or national origin that title VII of the Civil Rights Act prohibits. It has no place in our society.

Some of the proponents of these exemptions claim the need to hire new blood to get new ideas into higher education or into their corporate offices. The presumption, however, that younger individuals have a monopoly on new ideas is simply an outdated ageist stereotype. There are countless examples of major breakthroughs in the sciences, art, literature, music, and other fields which have come from those individuals over the normal retirement age.

Mr. President, if we believe as a matter of principle that no American should be forced to retire at a set age without regard to individual competency—and that is the view held by most Americans—then there is simply no justification for carving out particular segments of the workforce for whom such protection will not be provided. The ADEA clearly does not limit an employer's ability to discharge any employee, regardless of age, who cannot adequately perform his or her duties. That ought to be the standard, not some arbitrary age factor, in every occupational field.

Mr. President, I ask unanimous consent that an article which recently appeared in the "Chronicle of Higher Education" discussing some of the issues associated with the tenured professor exemption be reprinted in the RECORD at the conclusion of my remarks.

Mr. President, the proposed "Age Discrimination in Employment and Apprenticeship Amendments of 1983" would also clarify the application of the ADEA to employee benefit plans. Under the present interpretation of the ADEA, employers may refuse to credit the additional work years after retirement age to an employee's pension. According to a report published by the Congressional Budget Office, "Work and Retirement Options for

Continued Employment of Older Workers," July 1982, 27 percent of the workers covered by private pension plans are subject to provisions that prohibit the accrual of pension benefits entirely after the normal retirement age, and 22 percent are in plans that limit in some fashion pension benefit accrual after a particular age. Under these plans, an older worker gets no or reduced pension credits for those additional work years. This type of discrimination clearly discourages older workers and denys them equal compensation for their work.

Finally, the proposed "Age Discrimination in Employment and Apprenticeship Amendments of 1983" would ban age discrimination under the National Apprenticeship Act. As more and more older workers need retraining and new skills, elimination of age limits which prevent them from gaining the education and training needed will become increasingly important.

S. 1752, AGE DISCRIMINATION IN PENSION BENEFITS ACT OF 1983

Mr. President, S. 1752, the proposed "Age Discrimination in Pension Benefits Act of 1983," contains the provisions of S. 2 which dealt with prohibiting private pension programs from discriminating against older workers. This legislation is within the jurisdiction of both the Labor and Human Resources and Finance Committees.

First, the Employee Retirement Income Security Act of 1974 (ERISA) would be amended to correspond to the amendments to ADEA contained in the first bill I have described. Employers would thus be prohibited from refusing to credit additional years of work beyond retirement age to an employee's pension fund under both ERISA and ADEA.

Second, the bill would specifically prohibit reduction of pension benefits by reason of any increase in the income of the participant due to employment by any employer for less than 1,000 hours during a calendar year. This provision is aimed at prohibiting the current practice of some employers of refusing to pay pension benefits to a retired worker who continues working in the same field or for the same employer. Until recently, an older worker might risk total forfeiture of his or her pension if the worker continued in the same field after reaching retirement age. In 1982, the Department of Labor issued regulations that permit some work activity by these pensioners, but allow total forfeitures for retirees who work more than 40 hours per month in prohibited employment. This legislation would prohibit an employer from withholding pension benefits so long as the pensioner did not exceed 1,000 hours per year. This is roughly twice the current allowable amount and would enable a retiree to work approximately halftime before an employer could withhold or reduce a pension.

S. 1753, OLDER WORKER EMPLOYMENT INCENTIVES ACT OF 1983

Finally, Mr. President, the third bill I am introducing today, S. 1753, the proposed "Older Worker Employment Incentives Act of 1983", contains the provisions of S. 2 which add low-income workers as covered categories of the targeted jobs tax credit and reduce the FICA tax for part-time older workers. This legislation is within the jurisdiction of the Finance Committee.

The existing targeted job tax credit provides employers with a tax credit equal to 50 percent of the first $6,000 in wages paid in the first year to workers in certain targeted categories and 25 percent of the first $6,000 paid in the second year of employment. Between 1979 and 1981, 800,000 workers benefited under the existing program which covers a variety of groups such as disadvantaged young workers, welfare assistance recipients, Vietnam era veterans, and former CETA public service employment participants. CBO has estimated that 1.5 million older workers between the ages of 62 and 69 and 2.6 million who are 70 years and older would be eligible under the same income standards that are applicable to other categories of workers. According to CBO, in may cases, the employment opportunities that would be created through extension of the credit to low-income older workers are likely to be part-time jobs because of the interplay between the $6,000 limit in the credit and the earnings limitation provisions in the Social Security Act.

This bill also contains provisions to cut in half the FICA tax for part-time older workers. Under present law, a part-time older worker must pay the full amount of the employee's share of the social security tax—the so-called FICA tax. This can be a substantial disincentive to working since his or her earnings are also subject to the earnings limitation which even under the 1983 liberalization will still result in an older worker losing $1 in social security benefits for every $3 in earned income over the $6,600 threshold.

Present law operates as a disincentive as well for employers to hire part-time older workers. The employer must pay the employer's share of the FICA tax on each part-time worker which can mean that the employer will end up paying more in FICA taxes for two part-time older workers than for one full-time worker. Some have advocated that FICA taxes be eliminated entirely for those older workers who are foregoing social security benefits because of earned income. They have argued that it is unjust to require these workers to continue paying for a benefit they are not receiving by virtue of remaining in the workforce. Such an approach, however, would deny these workers the benefit of the delayed retirement adjustment factor and might reduce considerably social security trust fund revenues.

Consideration has also been given to a pro rata reduction in the FICA rate for part-time work, but the administrative complexities of that approach would be significant. Thus, this legislation would simply provide that, as to a worker over the age of 65, the tax rate for both employer and employee share of the FICA tax would be reduced to one-half the rate that would otherwise be applicable with respect to that portion of wages that does not exceed one-half the wage base established for FICA taxation.

CONCLUSION

Mr. President, I hope that action can be taken on these proposals to help eliminate the obstacles that deter older workers from remaining in the work force. Public opinion desire clearly point in this direction. We need to make a firm commitment to action.

I ask unanimous consent that the text of the three bills I am introducing be reprinted in the RECORD following the article from the "Chronicle of Higher Education."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

I WASN'T READY TO GO: THE CONFLICT OVER FORCING PROFESSORS TO RETIRE

(By Suzanne Perry)

Five years ago, Saul Levine, then a professor of art history at Fairleigh Dickinson University, turned 65.

It was a traumatic experience.

For although Mr. Levine loved teaching, he was being forced to give up his tenured position because he had reached the age for mandatory retirement under a faculty contract with the university. The university then appointed him to nontenured position for one year and offered him only a part-time job for the year after that.

The professor says he was so unprepared to pull back from his life's work that he felt as though he had been stricken by "emotional leukemia."

One day you're at peace with yourself, he says, and then "suddenly there is the restraint of serious illness, and very little can be about done it. You have to accept the reality of a status that is brutally changed."

Mr. Levine did what he could: He sued the university on charges of age discrimination, and won—mainly because the university, in stripping him of his tenure, left itself open to a judgment that it had violated the federal Age Discrimination in Employment Act. Ironically, until last July, that law protected nontenured faculty members—but not tenured faculty members—after age 65.

Under the terms of Mr. Levine's settlement, however, he had to leave Fairleigh Dickinson at age 69.

"I wasn't ready to go," he says. "I considered myself at the peak of my teaching abilities. I'm a Michelangelo scholar, and the interaction between teaching and scholarship is always there. You can't separate it."

Mr. Levine says his leaving disrupted the lives of others, as well, as evidenced by letters that many colleagues and students sent to administrators on his behalf.

Mr. Levine's legal battle is over now, but the philosophical questions surrounding mandatory retirement still tug at him. Is it morally right, he asks, for an employer to require workers to retire against their will?

Mr. Levine says No.

"Retirement in a democratic society has to be voluntary," he says. "Any arbitrary imposition of retirement is a violation of our civil rights. It's something ugly. It's anathema. It violates our basic sense of decency."

BURGEONING MOVEMENT

Throughout American society a burgeoning movement against age discrimination is forcing people to confront such issues these days.

In academe, however, there are special complications, because leading professional associations have said that tenured faculty members should be treated differently from other employees. Others disagree. The arguments reflect a classic conflict between the rights of individuals and the needs of insititutions.

Five years ago, when the Age Discrimination in Employment Act was amended to prohibit mandatory retirement before age 70, colleges and universities were temporarily exempted—until July, 1982—in the case of tenured professors.

This year, Rep. Claude Pepper, Democrat of Florida, one of the nation's leading advocates of rights for older Americans, and Sen. John Heinz, Republican of Pennsylvania, introduced bills to abolish mandatory retirement altogether. But once again, under their proposals, application of the law to tenured professors would be delayed—this time for 15 years.

The exemption is the product of intensive lobbying by the American Council on Education on behalf of all major higher-education associations, reportedly augmented by hundreds of letters to Congress from college and university presidents.

The institutions' argument, basically, is that "uncapping" the retirement age for tenured professors would exacerbate demographic pressures that have already sharply reduced the number of openings for new faculty members across the country. Confronted with projections of declining enrollments and a bulge of middle-aged faculty members who were hired during higher education's boom period of the 1950's and 1960's, college and university officials say they must be able to retire older professors.

No other profession, they say, must grapple with the intricacies of academic tenure, which makes it difficult to fire an unproductive professor. Moreover, the "graying" of college faculties will lead to increased salary costs and a lack of fresh blood, the officials maintain.

AAUP SUPPORTS EXEMPTION

On the surface that might seem to be strictly a management viewpoint. Yet the proposed 15-year exemption is also being supported by the American Association of University Professors, which opposed a faculty exemption in 1978 but now fears that uncapping the retirement age altogether could freeze out younger faculty members from the tenure system.

Said the association's Committee on Academic Freedom and Tenure in a report published last fall:

"An effect of uncapping legislation, though one probably not consciously intended by its framers, will be to shift institutions' total personnel costs toward the older edge of the faculty age spectrum, as many professors elect to stay on at full salary, past the traditional mandatory retirement age of 70 at many institutions, as well as past the previously traditional retirement age of 65 at many other institutions."

Matthew W. Finkin, professor of law at Southern Methodist University and chairman of the A.A.U.P. committee, says the association's concern extends to "the vitality of the professoriate as a whole."

Officials of the association say its position has attracted little negative response from members.

But in other corners of academe, there are ripples of discontent.

For one thing, the two other major faculty organizations—the American Federation of Teachers (A.F.L.-C.I.O.) and the National Education Association—oppose the exemption. The N.E.A. opposes mandatory retirement for any workers, and it argues in a letter to Congress that excluding tenured faculty members from legislative protection would be "double discrimination—once on the basis of age and again on the basis of occupation. "The A.F.T. has not taken a position on the general question of mandatory retirement, but it says that any legislation on the issue should afford tenured faculty members "treatment comparable to other professionals."

For another thing, some faculty members and administrators passionately believe that forcing competent professors to retire involuntarily is as unjust as discriminating against someone on the basis of race or sex.

"WORST FORM OF DISCRIMINATION"

"In some ways this is the worst form of discrimination," says Allen D. Calvin, professor of organization and leadership at the University of San Francisco. "If we're lucky enough, all of us will get to be 65 or 70, so this will affect all of us."

Mr. Calvin has launched a one-man campaign against mandatory retirement. For years, he has been collecting documents, writing letters, contacting Congressional staff members, and lobbying in California for a pending state bill that would prohibit forced retirement of professors.

He sees those efforts as a logical extension of his own involvement in the civil-rights movement. While retirement will not affect him directly for some time—he is only 55—Mr. Calvin says he was moved to act after watching some of his former colleagues become "absolutely destroyed" by mandatory retirement.

"The more I watched some of the finest professors I knew being fired, the more irritated I got," he says.

Another opponent of mandatory retirement is Thomas M. Stauffer, now chancellor of the University of Houston. Until last summer, he was director of external relations at the American Council on Education, one of the leading advocates—both in 1978 and today—of allowing colleges to force tenured professors to retire.

Mr. Stauffer's view, which he explained in a recent letter to the New York Times, is that academe is inviting greater federal intervention by asking the government to exempt it from "fundamental national policy."

"American higher education is part of the American nation, not separate from its basic social trends," he wrote. "The American population is aging, and recognizing the value of older workers is just as significant as recognizing the value of women and minorities in the work place."

Mr. Stauffer says he sympathizes with the A.C.E., which was flooded with letters from college presidents who opposed raising or uncapping the mandatory-retirement age for tenured professors. But he says he couldn't shake the feeling that their arguments were discriminatory.

"I thought what A.C.E. was doing in a constituent sense was correct—representing the people in higher-education land," he says. "But I thought it was wrong, pure and simple."

J. W. Peltason, president of the American Council, says its position serves the needs of the entire higher-education community. "In all fields, one needs a balance of younger faculty and more experienced faculty to stimulate students and colleagues alike by challenging old as well as new ways of thinking and by contributing varied perspectives," he told Congress in a letter.

On the other side of the question, Bernard Roth, professor of mechanical engineering at Stanford University, is an example of someone who became "converted" by considering the individuals involved. He says he began fighting mandatory retirement after investigating the issue about five years ago as chairman of Stanford's A.A.U.P. chapter.

"My mind literally got blown," Mr. Roth recalls. "Every stereotype I had on the issue was wrong."

He says he discovered that instead of "doddering guys with yellow notes," many of the Stanford professors who were being forced to retire were "stars who were bringing in millions of dollars" that created jobs for young scholars.

Mr. Roth testified against a California bill, which eventually passed, that exempted tenured professors at private universities from state legislation abolishing mandatory retirement. And he led a fight on behalf of Stanford professors who were in what he calls the "window group"—they turned 65 between the time Congress amended the mandatory-retirement law and the time the exemption affecting tenured professors expired. Stanford agreed to offer the affected employees half-time assignments.

Opponents of mandatory retirement in higher education also raise these points:

There is no evidence that many professors would stay past 70 even if they could, so predictions of dire consequences from uncapping the retirement age may be exaggerated.

Colleges and universities are using mandatory retirement as a way to rid themselves of unproductive professors, instead of dealing directly with a problem that can afflict faculty members at any age.

Some professors can't afford to retire because their pensions are inadequate.

The argument that hard data on mandatory retirement do not exist is supported by a Congressional staff member who is closely involved with the pending legislation.

"I find it kind of curious that the supposed scientific and academic leaders of this country are running around screaming Chicken Little stories," he says.

Although the bills' sponsors agreed for political reasons to include the 15-year exemption, this source adds, "it will be up to the academics to prove their case to Congress."

According to the Teachers Insurance Annuity Association and College Retirement Equities Fund, the average age at which faculty members begin collecting their pensions—which usually represents a retire-

ment date—has been declining over the past 10 years. In 1982, the organizations report, 10 percent of their participants began receiving annuity checks at age 70 or over, compared with 12.5 percent in 1973.

The report by the A.A.U.P.'s academic-freedom committee said academic should be exempted from proposals to uncap the retirement age for tenured professors "so long as the professoriate is otherwise fairly treated in the administration of the institution's retirement plan."

Mr. Finkin defends the committee's position as a highly principled one. The academic-freedom panel considered the civil-liberties argument carefully, he says, and "the question was a close one."

But on balance, the committee believed that its position served the greater good. The prospect of unlimited employment of faculty members, he says, could cause administrations to attack the tenure system.

Furthermore, mandatory retirement is a "civilized" way to ease out a faculty member who, "after 30 years of service, is not as productive as he once was," Mr. Finkin adds. "One of the advantages of mandatory retirement is it is neutral."

Mr. Peltason of the A.C.E. agrees that the prospect of charging older professors with incompetence—and perhaps fighting the battle in court—is unappealing.

"You'd have letters from students of 20 to 30 years ago, saying, 'He was the best thing in my life.' Then the university has to come forward and say, 'Yes, Professor X was a fine biochemist, but he hasn't done anything up to date in the last 10 years.' "

Meanwhile, as the debate continues, individual lives are directly affected by colleges' decisions on retirement. While many professors undoubtedly look forward to retiring, for some the experience is wrenching.

Gifford E. McCasland, for example, in 1978 and 1979 waged a bitter fight through his faculty union against his forced retirement at age 65 from the University of San Francisco. Because of the 1978 exemption, however, he had no legal recourse. Mr. McCasland, a former professor of chemistry, found that a bitter pill to swallow.

"To single out any one occupation and deny you the protection of the law—I think it's an outrage," he says. "To me, it's unconstitutional. I don't know how they get away with it."

The outrage also extended to Mr. McCasland's wife, Evelyn, who says it was difficult to watch her husband become the victim of discrimination for the first time in his life.

For several years, the McCaslands were consumed by the mandatory-retirement issue. They wrote letters, clipped and filed dozens of articles about retirement, and monitored efforts to change the California law.

But, they say, they eventually gave up hope that anyone was listening. Mr. McCasland found a part-time research position at the University of California at San Francisco, but the bitterness lingers. Mrs. McCasland says they refuse to attend the annual emerti dinners of the University of San Francisco.

In a final effort to state his case, Mr. McCasland wrote an article that he hoped Newsweek would print on its "My Turn" page. The article, which has not been published, was entitled "Professors—On the Scrap-Heap at 65."

S. 1751

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Age Discrimination in Employment and Apprenticeship Amendments of 1983".

APPLICATION OF AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

SEC. 2. (a)(1) Section 12(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631(a)) (relating to age limitations) is amended by striking out "but less than 70 years of age".

(b) Subsection (c) of section 12 of such Act (29 U.S.C. 631(c)) is repealed.

BENEFIT ACCRUAL BEFORE MAXIMUM NORMAL RETIREMENT BENEFIT

SEC. 3. Section 4(f)(2) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(f)(2)) (relating to prohibition of age discrimination) is amended—

(1) by striking out "and" after "hire any individual,"; and

(2) by inserting before the semicolon at the end thereof a comma and "and no employee benefit plan shall require or permit the suspension of an employee's benefit accrual or the reduction of the rate of an employee's benefit accrual because of age before accruing the maximum normal retirement benefit".

PROHIBITION OF AGE DISCRIMINATION IN APPRENTICESHIP PROGRAMS

SEC. 4. The first section of the Act of August 16, 1937 (50 Stat. 664, chapter 663; 29 U.S.C. 50), popularly known as the National Apprenticeship Act, is amended by inserting "(a)" after the section designation and by adding at the end thereof the following new subsection:

"(b) In promoting labor standards for the welfare of apprentices under subsection (a) of this section, the Secretary shall ensure that no program of apprenticeship discriminates against any individual, because of the age of such individual, in admission to, or employment in, any such program.".

S. 1752

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Age Discrimination in Pension Benefits Act of 1983".

BENEFIT ACCRUAL BEYOND NORMAL RETIREMENT AGE

SEC. 2. (a)(1) Subsection (a) of section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(a)) (relating to benefit accrual requirements) is amended to read as follows:

"(a) Each pension plan shall satisfy the requirements of subsection (b)(3), and—

"(1) in the case of a defined benefit plan, shall satisfy the requirements of subsection (b)(1); and

"(2) in the case of a defined contribution plan, shall satisfy the requirements of subsection (b)(2).".

(2) Section 204(b)(1) of such Act (29 U.S.C. 1054(b)(1)) is amended by adding at the end the following new subparagraph:

'(H) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the terms of the plan, an employee's benefit accrual is suspended or the rate of an employee's benefit accrual is reduced solely because of age before accruing the maximum normal retirement benefit.".

(3) Section 204(b) of such Act (29 U.S.C. 1054(b)) is further amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2) An individual account plan satisfies the requirements of this paragraph if, under the plan, employer contributions to the employee's account are not suspended or reduced solely because of age.".

(b)(1) Section 411(b)(1) of the Internal Revenue Code of 1954 (relating to accrued benefit requirements) is amended—

(A) by striking out "GENERAL RULES.—" and inserting in lieu thereof "DEFINED BENEFIT PLANS.—"; and

(B) by adding at the end thereof the following new subparagraph:

"(H) CONTINUED ACCRUAL BEYOND NORMAL RETIREMENT AGE.—Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the terms of the plan, an employee's benefit accrual is suspended or the rate of an employee's benefit accrual is reduced solely because of age before accruing the maximum normal retirement benefit.".

(2) Section 411(b) of the Internal Revenue Code of 1954 is further amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2) DEFINED CONTRIBUTION PLANS.—A defined contribution plan satisfies the requirements of this paragraph if employer contributions to the employee's account are not suspended or reduced solely because of age.".

(3) The first sentence of section 411(a) of the Internal Revenue Code of 1954 (relating to minimum vesting standards) is amended by striking out "paragraph (2) of subsection (b), and" and all that follows down through the end thereof and inserting in lieu thereof "subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of defined contribution plan, the requirements of subsection (b)(2).".

EMPLOYMENT BEYOND NORMAL RETIREMENT AGE

SEC. 3. (a) Section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) (relating to form and payment of benefits) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c) If—

"(1) a participant or beneficiary is receiving benefits under a pension plan, or

"(2) a participant is separated from the service and has nonforfeitable rights to benefits,

a plan may not deny, suspend, or reduce the benefits of such a participant by reason of any increase in the income of the participant due to employment of the participant by any employer for less than 1,000 hours during a calendar year.".

(b)(1) Section 203(a)(3)(D)(v) of such Act (29 U.S.C. 1053(a)(3)(D)(v)) is amended by striking out "section 206(c)" and inserting in lieu thereof "section 206(d)".

(2) Section 211(b)(1) of such Act (29 U.S.C. 1061(b)(1)) is amended by striking out "206(d)" and inserting in lieu thereof "206(e)".

EFFECTIVE DATE

SEC. 4. The amendments made by this Act shall apply with respect to plan years beginning after December 31, 1984.

S. 1753

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Older Worker Employment Incentives Act of 1983"

CREDIT FOR EMPLOYMENT OF CERTAIN NEW EMPLOYEES

SEC. 2. (a) Subsection (d) of section 51 of the Internal Revenue Code of 1954 (relating to members of targeted groups) is amended—

(1) in paragraph (1)—

(A) by striking out "or" at the end of subparagraph (I);

(B) by striking out the period at the end of subparagraph (J) and inserting in lieu thereof a comma and "or";

(C) by adding at the end thereof the following new subparagraph:

"(K) low-income older worker.";

(2) by redesignating paragraphs (11), (12), (13), (14), and (15) as paragraphs (12), (13), (14), (15), and (16), respectively, and inserting after paragraph (10) the following new paragraph:

"(11) Low-income older worker.—The term 'low-income older worker' means an individual certified by the designated local agency as—

"(A) at least 65 years of age, and

"(B) a member of an economically disadvantaged family (as determined under paragraph (12)).";

(3) by striking out "paragraph (11)' each place it appears in paragraph (13)(A)(iv) (as redesignated by paragraph (2) of this subsection) and in paragraphs (3)(A)(ii), (4)(C), and (7)(B) and inserting in lieu thereof "paragraph (12)"; and

(4) by striking out "paragraph (14)" each place it appears in subparagraphs (A)(ii) and (C) of paragraph 13 (as redesignated by paragraph (2) of this subsection) and inserting in lieu thereof "paragraph (15)".

(b) The amendments made by this section shall apply to amounts paid or incurred after December 31, 1983, in taxable years ending after such date.

SEC. 3. REDUCTION IN EMPLOYMENT TAXES WITH RESPECT TO OLDER WORKERS.

(a)(1) Section 3101 of the Internal Revenue Code of 1954 (relating to rate of FICA tax on employees) is amended by adding at the end the following new subsection:

"(e) Tax With Respect to Older Workers.—In the case of wages received during a calendar year by an individual who is 65 years of age or older, each rate of tax imposed by subsections (a) and (b) shall be, with respect to that portion of such wages which does not exceed one-half of the contribution and benefit base (as defined in section 230 of the Social Security Act) in effect for such calendar year, one-half of the rate otherwise applicable under such subsection.".

(2) Section 3111 of such Code (relating to rate of FICA tax on employers) is amended by adding at the end the following new subsection:

"(d) Tax With Respect to Older Workers.—In the case of wages received during a calendar year by an individual who is 65 years of age or older, each rate of tax imposed by subsections (a) and (b) shall be, with respect to that portion of such wages which does not exceed one-half of the contribution and benefit base (as defined in section 230 of the Social Security Act) in effect for such calendar year, one-half of the rate otherwise applicable under such subsection.".

(b)(1) Section 3201 of such Code (relating to rate of Railroad Retirement Act tax on employees) is amended by adding at the end the following new subsection:

"(c)(1) In the case of compensation paid in any calendar month for services rendered by an employee who is 65 years of age or older, the rate of tax imposed on the income of such employee under subsection (a) for such month shall equal, with respect to that portion of such compensation which, when added to the compensation paid in the preceding months of the same calendar year to such employee, does not exceed one-half of the current maximum annual taxable 'wages' (as defined in section 3121), one-half of the rate of tax otherwise applicable under such subsection.

"(2) In the case of compensation paid in any calendar month for services rendered by an employee who is 65 years of age or older, the rate of tax imposed on the income of such employee under subsection (a) shall be increased—

"(A) with respect to the portion of such compensation described in paragraph (1), by each rate of tax specified in section 3101 (e); and

"(B) with respect to the remainder (if any) of such income, by each rate of tax specified in subsection (b).".

(2) Section 3211 of such Code (relating to rate of Railroad Retirement Act tax on employee representatives) is amended by adding at the end the following new subsection:

"(c)(1) In the case of compensation paid in any calendar month for services rendered by an employee representative who is 65 years of age or older, the rate of tax imposed under subsection (a) shall be, with respect to the portion of such income described in section 3201(c)(1), one-half the rate of tax otherwise imposed under such subsection.

"(2) In the case of compensation paid in any calendar quarter for services rendered by an employee representative who is 65 years of age of older, the rate of tax imposed under subsection (a) shall be increased—

"(A) with respect to the portion of such compensation described in section 3201(c)(1), by the rates of tax specified in section 3101(e) and section 3111(d); and

"(B) with respect to the remainder (if any) of such compensation, by the rates otherwise applicable under such subsection.".

(3) Section 3221 of such Code (relating to rate of Railroad Retirement Act tax on employers) is amended by adding at the end the following new subsection:

(e)(1) In the case of compensation paid in any calendar month by an employer for any services rendered to him by an employee who is 65 years of age or older, the rate of tax imposed on such employer under subsection (a) shall be, with respect to the portion of such compensation described in section 3201(c)(1), one-half the rate of tax otherwise imposed on such employer under such subsection.

(2) In the case of compensation paid in any calendar month by an employer for any services rendered to an employee who is 65 years of age or older, the rate of tax imposed under subsection (a) shall be increased—

"(A) with respect to the portion of such compensation described in section 3201(c)(1), by the rates of tax specified in section 3111(d); and

"(B) with respect to the remainder (if any) of such compensation, by the rates of tax specified in subsection (b).".

(c) The amendments made by this section shall apply with respect to wages received and compensation paid after December 31, 1983.

By Mr. BENTSEN (for himself and Mr. TOWER):

S. 1754. A bill to direct the Secretary of Agriculture, to convey, without consideration, to the Sabine River Authority of Texas approximately 34,000 acres of land within the Sabine National Forest, Texas, to be used for the purposes of the Toledo Bend Project, Louisiana and Texas; to the Committee on Agriculture, Nutrition, and Forestry.

SABINE NATIONAL FOREST

Mr. BENTSEN. Mr. President, today I am introducing a bill to formally transfer some 34,000 acres of Federal land in east Texas to the Sabine River Authority. I am joined in making this proposal by my distinguished colleague from Texas, Senator TOWER.

This bill gives the Sabine River Authority conditional property rights to the area subject to inundation by the Toledo Bend Reservoir. The transfer will only be conditional. These lands must only be used as part of the Toledo Bend Reservoir, and if there is any change in their use in the future the lands will revert back to the Federal Government. In addition, the Federal Government will retain all mineral rights to these lands.

This legislation does not change the present use of the land in any way. It only recognizes the current usage and cuts down on the paperwork and redtape currently involved because of the unique nature of this project.

The Toledo Bend project is unique, as it is the only interstate reservoir, dam, and powerhouse to be financed, constructed, and operated without Federal funds or participation. The States of Texas and Louisiana joined together to finance and build this project. Although this arrangement has produced great benefits for the citizens of Texas and Louisiana at no cost to the Federal Government, it has also created some unique problems.

Other lakes, built with Federal funds, automatically get certain exemptions along with those Federal funds. The Sabine River Authority did not get these exemptions, because it did not tap the Federal Treasury. Thus the Sabine River Authority is not automatically exempt from paying rental fees for the Federal land which was flooded by this lake. No such fees have been paid by the Sabine River Authority, since they have applied for and received exemptions from the Federal Energy Regulatory Commission. These exemptions are granted

only annually, however, and going through this application process each year is a needless exercise in paperwork.

This land is part of and necessary to the Toledo Bend Reservoir, either as land subject to inundation or as small recreation areas. I see no reason why it should not be transferred to the Sabine River Authority, subject to the strict conditions in this bill, in order to do away with the tedious and unnecessary redtape now associated with this important project. This legislation should be passed quickly and easily, and I urge its expeditious consideration.

By Mr. SPECTER:

S. 1755. A bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA), to create a trust fund for the reclamation of underground mines and surface mines and for other purposes; to the Committee on Energy and Natural Resources.

SURFACE MINING CONTROL AND RECLAMATION

Mr. SPECTER. Mr. President, I am introducing today a bill that amends the Surface Mining Control and Reclamation Act of 1977. A number of problems have developed since that act's adoption that I hope to eliminate with some simple and common sense changes.

The Surface Mine Control and Reclamation Act of 1977 has been very useful in helping Pennsylvania correct dangerous conditions at abandoned mines. And as the State with the longest history of mining coal, Pennsylvania has more than its share of hazards caused by abandoned mines. In fact, Pennsylvania has approximately one-third of all abandoned coal mine problems in the Nation.

Our problems, like those of many other States, are caused by both surface and deep mines. Consequently, the reclamation fund is supported by contributions from both surface and deep mine operators.

However, it has been the experience in my State that a disproportionate share of money actually spent is for deep mine reclamations.

While I understand that deep mines can cause very severe problems, surface mines can also present serious dangers to the health and safety of nearby communities. The distribution of reclamation funds should be more equitable in order to reflect this fact.

At the time the Reclamation Act was enacted, surface mining problems were deemed to be predominant over those caused by deep mines. As a result, surface mine operators were assessed a $0.35 per ton of coal mined contribution to the fund while deep mine operators had a fee imposed of only $0.15 per ton. This fee schedule is uniform across the Nation. Since the act has taken effect, a disproportionate share of the fund has been spent on deep mine reclamations.

In addition to the inequity between surface and deep mines, this spending pattern has resulted in regional disparities of expenditures.

In order to correct this problem, this bill establishes two trust funds. One will be freed by contributions from surface mine operators and the other from deep mine operators. Money from the trust account can be distributed by the State with approval from the Department of the Interior.

I am aware of the type and severity of abandoned mine problems associated with both surface and deep mines. My point is that both types of problems should be addressed simultaneously. The difficulties caused by abandoned mines have been accumulated over many decades. It will require many years to correct the situation. There is every reason to move along both fronts.

The bill also makes changes to the administration of the reclamation funds. For instance, the 50-percent State share for a particular project is made available once the general State program is approved without the time consuming process of waiting for OSM scrutiny of each individual reclamation proposal.

Mr. President, taken together, these changes represent a vast improvement to the act as it is applied currently. I have worked very closely with the Pennsylvania Coal Mining Association in formulating this bill. They are to be commended for their leadership in suggesting needed improvements to the law. I believe that their ideas will appeal to a large and diverse coalition.

By Mr. DURENBERGER:

S. 1756. A bill to provide for assistance to State and local governments and private interests for conservation of certain rivers, and for other purposes; to the Committee on Energy and Natural Resources.

STATE AND LOCAL RIVER CONSERVATION ACT OF 1983

Mr. DURENBERGER. Mr. President, today it is with great pleasure that I introduce S. 1756, the State and Local River Conservation Act of 1983.

An amendment to the National Wild and Scenic Rivers Act, Public Law 90-542. The purpose of the bill is to stimulate the conservation of rivers by State and local governments and landowners by providing incentives, including grants, protection from adverse development, and support for volunteer efforts.

The State and Local River Conservation Act of 1983 resulted from the work I have done as chairman of the Intergovernmental Relations Subcommittee of Governmental Affairs and incorporates the recommendations made at a hearing that focused on an innovative river protection program developed in Minnesota for the protection of the upper 400 miles of the Mississippi River by the Upper Mississippi Headwaters Board.

Over the past 2 years, the subcommittee has focused on alternatives for natural resource management. The subcommittee conducted a review of major Federal environmental programs and their impact on State and local government. An examination of the Federal environmental regulatory programs found that the current debate about shifting responsibilities to States is part of an extended pattern in Federal-State relations. The trend started with recognition at the State and local level that pollution problems needed to be translated into national goals and objectives. But also that those goals could best be achieved by relying to some degree on Stataes and localities for implementation and enforcement. The result has been a partnership characterized by tensions, conflicts, and duplication of efforts but a partnership nonetheless.

Unlike pollution control, protection of national resource areas considered of national importance has been essentially a Federal prerogative. National parks, refuges, wilderness areas, national monument, and the National Wild and Scenic River, System are all controlled by the Federal Government. Bitter controversies with the local citizens and landowners have marked the past decade as major units were added to the Federal system.

Delays and deficiencies in payments for land acquisition, loss of a portion of the local tax base and the multiple use of the resource itself add to the Federal/State/local tensions. If that is compounded by a perception that somehow "Washington knows best and must protect the resource from the local citizens," the scene is set for deteriorating Federal relationships with State and local government as well as with affected citizens. All too often these conflicts are resolved by the courts. But as the issues were examined, it became clear that not only was the Federal-State-local relationship at risk—so too was the resource that needed protection. We needed to devise a way to incorporate the great strength and wisdom of the State and local units of government into a full partnership with the Federal Government. The purpose is to work toward the common goal of protecting our outstanding natural resources in this case those portions of the rivers identified as possessing outstanding natural values by either the Federal or State governments.

The Wild and Scenic Rivers Act, presently the Nation's chief means for preserving rivers has protected 61 rivers or river segments totaling over 7,000 miles.

However, the National Park Service has identified over 60,000 miles of rivers as possessing such exceptional natural values as to make them potentially eligible for inclusion in the national system.

These rivers comprise about 2 percent of the 3.25 million river miles in the country.

But it is clear that the national system cannot, nor is it appropriate that it should, protect all 60,000 miles of these outstanding rivers. The States and local governments must play a vital role.

The upper Mississippi is a case in point of how State and local governments can complement Federal efforts by protecting a river on their own.

The 466 miles of the Mississippi, from its source at Lake Itasca, to Anoka, Minn. were originally recommended for Federal designation. However, local counties and citizens, wanting to see control of its management remain at the local level, proposed the Mississippi Headwaters Board, a multicounty agency given the task of developing a protection and management plan for the river. The result is one of the most successful river conservation programs in the country.

What happened in Minnesota, has achieved national attention. Testimony regarding the Headwaters Board has been presented before the Public Lands and Reserved Water Subcommittee of Senate Energy and Natural Resources. The National Association of Counties has endorsed the project and included it for discussion in a National Association of Counties forum held in Alaska. The Upper Mississippi Headwaters Board recently received the County Achievement Award from the National Association of Counties.

In June 1982, I held a hearing in Grand Rapids, Minn., that looked at the Headwaters Board in detail. The hearing examined the elements and process by which local management of an area considered of national importance takes place, and assessed the possibilities of its application elsewhere.

The purpose behind the hearing was to look at alternatives for natural resource management—to find new ways to achieve national policy through redesigning the respective roles of Government.

The hearing provided an opportunity to examine carefully what works. What Federal role facilitates local/State action for resource protection. Where funding will be found for necessary acquisition and management expense. What additional Federal and State legislation is needed, and other considerations that continue the dialog I have undertaken in the Intergovernmental Relations Subcommittee on the realinement of Federal/State/local relationship.

Finally, the hearing provided the opportunity to hear from the people who live along the Mississippi River and have managed the headwaters of the Mississippi so that it is considered a major national resource. It is they through local representatives who designed the Headwaters Board as an alternative to natural resource management.

The State and Local River Conservation Act of 1983 grew out of that hearing, and work with the Upper Mississippi Headwaters Board and the American Rivers Conservation Council.

One point is abundantly clear. There is no single panacea or simple answer. No one answer for every resource, every State, or every community. I believe that in the future we will live with a great variety of answers if we want them to be effective in meeting the goals of our society. Greater State and local involvement with reduced Federal funding is not the answer. At the present time the area of natural resource and environmental management is a complex system which has as one of its chief characters linkages and interdependence of the several units of government.

Adverse State and local reaction to Federal initiatives in resource management necessitated the review of established programs. The new realities—including the Federal budget deficit and escalating State and local government fiscal problems requires that we look for new ways to achieve our national goals for resource protection and wise management.

The State and Local River Conservation Act of 1983 is such an alternative. Derived from a successful, local/State initiatives, its passage would provide the flexibility needed to move the wild and scenic river program forward. It is an option, at extremely low Federal investment to spur development of State and local river conservation efforts nationwide.

The bill incorporates the following recommendations that were made at the hearing:

Strengthen formal State river preservation programs. At present, only 27 States have established river preservation programs, encompassing approximately 13,000 miles of rivers. However, even among these programs, the adequacy of protection varies greatly. Because of lack of funding, personnel, and Government support, most of these programs, fail to provide adequate protection and exist chiefly on paper. According to a recent report on State river programs prepared by the river conservation fund, only 9 of the 27 established programs have the legislative and administrative authority to protect the rivers included in the program. Of these nine, only two to three have minimally adequate budgets to achieve their mandate.

This bill would provide needed seed money for States to establish or upgrade programs. It would be matched by the States but the important point is that these small grants would provide for great savings in the cost of river protection by promoting low-cost conservation techniques.

Clarify existing law concerning citizen involvement and tax incentives. There are existing authorities to promote low-cost river conservation. These include laws to encourage volunteer efforts in our national parks and forests, and provide tax incentives for the donation of lands for conservation purposes.

This bill clarifies these existing laws to insure that their applicability to river conservation is recognized, and to encourage their use in conserving rivers.

Remove roadblocks to State river conservation efforts. Presently States can act to protect rivers, but Federal agencies can preempt those efforts and allow projects that are counter to the established State policy. This bill would provide a mechanism for States to concur in Federal development projects on a limited number of rivers which the State has specifically set aside for conservation purposes.

The State and Local River Conservation Act of 1983 which I introduce today, is intended to compliment the Federal Wild and Scenic Rivers Act. The Federal act will continue to protect many of America's outstandingly remarkable rivers. But the State and Local River Conservation Act will greatly expand the number of options for river conservation, often at lower cost and with local control. It builds on the demonstrated interest, and ability, at State and local levels to conserve community rivers. It allows the Federal Government to play a necessary role in supporting river conservation activities without becoming the dominant player.

I have heard from groups all across the country—Federal, State, and local officials, national and local environment groups and landowners associations—who strongly support the concepts embodied in this bill. I believe its enactment will provide great impetus to the many efforts already underway to conserve and wisely use our Nation's precious rivers.

Mr. President, I request the State and Local River Conservation Act of 1983 be printed in the RECORD along with my comments today.

There being no objection, the bill was ordered to be printed in the RECORD as follows:

S. 1756

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "State and Local River Conservation Act of 1983."

PURPOSE

SEC. 201(a) FINDINGS—The Congress finds that—

(1) Many rivers throughout the Nation possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historical, cultural, or ecological values;

(2) The Nationwide Inventory of Rivers lists many rivers possessing such attributes;

(3) There is considerable support for protecting such rivers from adverse development;

(4) The National Wild and Scenic Rivers System has been successful in protecting a number of these outstanding rivers, but inclusion of all rivers worthy of preservation in the National System is neither possible nor appropriate;

(5) Because river preservation works best when it is a cooperative effort among the federal government, state and local governments, land owners, and private organizations, a program of federal incentives for the conservation of such rivers through other than federal designation is critical to the protection of the nation's system of freely-flowing rivers.

(b) PURPOSE—The Congress declares that it is the purpose of this Act to stimulate the conservation of rivers by State and local governments and landowners by providing incentives including grants, protection from adverse development, and support for volunteer efforts.

GRANTS

SEC. 301(a) the Secretary of Interior is authorized and directed to make grants to states for—

(1) The establishment and administration of State or local programs to conserve the natural environmental values of rivers within the appropriate jurisdiction concerned, or

(2) Conservation by the state, locality, or qualified private organization of any lads which are adjacent to, within or border on the designated boundary of, or are in the environs of rivers included in state, local, or federal river programs, assessments, or inventories. The appropriate Secretary will determine which land qualify in the case of rivers included in federal programs or inventories. The appropriate state agency head, or where the state does not have a river protection program, the Governor will determine which lands qualify in the case of rivers included in state or local programs or assessments.

(3) developing river management plans, technical assistance documents, or regulations for rivers or river segments mentioned in Section 301(a)(2) of this Act, or

(4) projects demonstrating innovative methods for river conservation pursuant to guidelines established by the Secretary of Interior.

Provided, That States receiving such grants fulfill the provisions of Section 302 of this Act, and *Provided further*, that at least 50 percent of the funds available to any state under the allocation formula in Section 301(e) of this Act shall be made available by that state to local governments and private organizations for the general purposes listed in Section 301(a)(1),(2), and (3) of this Act.

(b) No part of any grant made under this section may be used for the acquisition of any land or interest in land, or for development of facilties.

(c) Not more than 50 percent of the costs of any program or project referred to in subsection 301(a) may be funded by grants made under this Section. The remaining share of such cost shall be paid by a state, local government, qualified private organization, or combination thereof in a manner, and with such funds, as may be satisfactory to the Secretary of Interior. States, local governments, and qualified private organizations may include, as their share of such remaining costs, in-kind contributions, not to exceed 10 percent of the non-federal share.

(d) Before approving any grant under Section 301(a) of this Act, the Secretary shall receive a written commitment from the State, local government, or qualified private organization for its share of the cost of the program to be funded under this Act.

(e) The grants shall be allocated among the states as follows: 40 percent of the yearly appropriation shall be divided equally among all states eligible to receive grants. The remaining 60 percent shall be distributed to those eligible states in proportion to the total mileage of rivers in the state included in the Nationwide Rivers Inventory.

(f) There is authorized to be appropriated from the general fund in the treasury such sums as may be necessary for the purposes of this section, not to exceed $5,000,000 in any one fiscal year for grants, plus such additional sums as may be necessary for the administration of this Act.

(g) The Secretary of Interior shall promulgate such guidelines as (s)he deems necessary to carry out the purposes of this Act with respect to assistance provided under this Act to states, local governments, and qualified organizations.

(h) Where state programs exist, the coordination of grants shall be through the agency responsible for administering the program. State program standards shall be considered as appropriate criteria for grant eligibility where they meet or exceed federal requirements. No grants shall be made where the result would be to circumvent, erode or otherwise impair the program authority of a state.

SEC. 302 Before a State shall be eligible for the receipt of grants under Section 301(a) of this Act, that state shall either have an established state program, or have developed an assessment of the river related resources of the state.

(a) Such assessment shall include (1) An identification of the natural environmental values of rivers within the state; (2) A priority rating indicating which river or river segments in the state should be conserved and protected from actions which would degrade the outstanding natural environmental values; (3) A significant public involvement program in the development of the assessment and the protection their values.

(b) Such assessments, in order to qualify the State for grants under section 301(a) must be approved by the governor or state statute of the appropriate state, and the Secretary of Interior.

SEC. 303 For the purpose of developing state river assessments, the Secretary of the Interior is authorized and directed to make grants to states without such assessments, including those states with already established river conservation programs, *Provided*, that (a) not more than 75-percent of the costs of such an assessment may be funded by grants made under this section. The remaining share of such costs shall be paid by the state in a manner and with such funds as may be satisfactory to the Secretary of Interior. States may not include, as their share of such remaining costs, in-kind contributions; (b) no state shall be eligible to receive more than one grant under this section for the development of a statewide river assessment; (c) grants to any one state shall not exceed 15 percent of the total funds that would be available to that state based on the formula in Section 301(e) of this Act.

(d) There is authorized to be appropriated from the general fund in the treasury such sums as may be necessary for the purposes of this section, not to exceed $2,000,000.

CITIZEN INVOLVEMENT

SEC. 401(a)(1) The Secretary of the Interior and the Secretary of Agriculture are authorized to encourage volunteers and volunteer organizations to conserve, maintain and manage, where appropriate, rivers throughout the Nation.

(2) Wherever appropriate in furtherance of the purposes of this Act and section 11 of the Wild and Scenic Rivers Act, each Secretary is authorized and encouraged to use the Volunteers in the Parks Act of 1969, and The Volunteers in the Forest Act of 1972, to recruit, and train and accept volunteers in aid of conservation, maintenance and management of rivers under their jurisdiction. Volunteers are entitled to reimbursement for incidental expenses including travel, subsistence, quarters, and other appropriate reimbursement as determined by the appropriate Secretary.

(b) Each Secretary, to further conservation efforts on non-federal rivers, may assist volunteers and volunteer organizations in conserving maintaining, and managing those rivers. Volunteer work may include, but need not be limited to—

(1) conserving, maintaining, or managing rivers included in state, local or federal river programs, assessments, or inventories, or

(2) operating programs to organize and superivse volunteer river preservation efforts with respect to the rivers referred to in paragraph (1), conducting river related research projects, or providing education and training to volunteers on methods of river preservation, maintenance, and management.

(c) The appropriate Secretary may utilize and make available federal facilities, equipment, tools, and technical assistance to volunteers and volunteer organizations, subject to such limitations and restrictions as the appropriate Secretary deems necessary or desirable.

STATE CONCURRENCE WITH FEDERAL PROPOSALS

SEC. 501. Any applicant for a required federal license, permit, or exemption from license or permit to conduct an activity affecting land or water uses within or adjacent to the designated boundary of or in the environs of, as determined by the governor, any river or river segment included in a state program shall provide in the application to the licensing or permitting agency a certification that the proposed activity will not adversely affect the values of the river or river segment for which it was designated. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each state with a river program, in order to take advantage of the provisions of this section, shall establish appropriate review procedures in connection therewith. At the earliest practible time, the state or its designated agency shall notify the appropriate licensing authority that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within 180 days after receipt of its copy of the applicant's certification, the state's concurrence with the certi-

fication shall be conclusively presumed. No license or permit shall be granted by the Federal agency with licensing authority unless the state or its designated agency has concurred with the applicant's certification or unless, by the state's failure to act, the concurrence is conclusively presumed.

TAX INCENTIVES

SEC. 601. For the purpose of conserving or enhancing the values of rivers included in state, local, or federal river programs, assessments, or inventories and environs thereof as determined by the appropriate Governor or Secretary, landowners are authorized to donate or otherwise convey qualified real property interest to qualified organizations consistent with Subsection 170(h)(3) of the Internal Revenue Code of 1954, as amended, including, but not limited to, right-of-way, open space, scenic or conservation easement without regard to any limitation on the nature of the estate or interest otherwise transferable within the jurisdiction where the land is located, *Provided*, That the appropriate agency responsible for the management or supervision of the river concurs in the donation. The conveyance of any such interest in land in accordance with this subsection shall be deemed to further a Federal conservation policy and yield a significant public benefit for purposes of section 6 of Public Law 96-541.

DEFINITIONS

SEC. 701. For the purposes of this Act, the term—

(a) "state program" shall mean a system of rivers or river segments which, in recognition of their natural environmental values has been designated by state statute, constitution, or executive order and has been provided with special protection from water projects and other adverse developments and managed under special guidelines for the preservation of the values for which it was designated.

(b) "local program" shall mean a river or system of rivers or river segments which, in recognition of their natural environmental values has been designated by local ordinance and is managed by a local government under special guidelines for the preservation of the values for which it was designated.

(c) "approved private organization" shall mean any organization under Section 501(c)(3) of the Internal Revenue Code of 1954 as amended, with a demonstrable conservation interest and qualifying under regulations promulgated under section 301(g) of this Act.

(d) "in-kind contribution" shall mean a non-monetary contribution to the non-federal share of grants under section 301(a) of this Act including, but not limited to land, interest in land, administrative services, and support services such as law enforcement, sanitary facilities, waste removal, or local management.

(e) "natural environmental values" shall mean those characteristics of rivers and adjoining lands, including, but not limited to scenic, recreational, geologic, fish and wildlife, historical, cultural, and ecological characteristics which make the river and adjoining lands worthy of conservation.

(f) "state, local, or federal river programs, assessments, or inventories" shall include state and local river programs as defined above; state river assessments as described in Section 302 of this Act; the National Wild and Scenic Rivers System as established by the Wild and Scenic Rivers Act, PL 90-542, as amended; rivers designated for study under section 5(a) of the Wild and Scenic Rivers Act, Rivers included in the list of rivers published pursuant to section 5(d) of the Wild and Scenic Rivers Act; and rivers included in the Nationwide Rivers Inventory, published by the National Park Service in January, 1982; and such additional rivers or river segments as may from time to time be identified by the Governors of Montana and Alaska within their respective States as potentially eligible for eventual study and designation for inclusion in the National Wild and Scenic Rivers System.

By Mr. LUGAR (for himself, Mr. BIDEN, Mr. DODD, Mr. DOLE, Mr. DOMENICI, Mr. DURENBERGER, Mr. HATCH, Mr. HELMS, Mr. HUDDLESTON, Mr. JOHNSTON, Mr. KENNEDY, Mr. LAXALT, Mr. MOYNIHAN, Mr. MURKOWSKI, Mr. PELL, Mr. PRESSLER, Mr. QUAYLE, Mr. ZORINSKY, Mr. COHEN, and Mr. TSONGAS):

S. 1757. A bill to provide for the establishment of U.S. diplomatic relations with the Vatican; to the Committee on Foreign Relations.

DIPLOMATIC RELATIONS WITH THE VATICAN

Mr. LUGAR. Mr. President, today, on behalf of 19 Senators, I am introducing legislation to permit the reestablishment of diplomatic relations with the Vatican.

Juridically, the Vatican is a sovereign state. It is formally recognized as such by over 100 nations. In my judgment, the United States should be among them.

We should recognize the Vatican not simply as a matter of diplomatic etiquette, although that is an important consideration. Even more important, however, is the reality that the Vatican, for historically unique reasons which are now reinforced by the courage and leadership of John Paul II, is a sensitive diplomatic center and a significant force for the defense of Western, Judeo-Christian values in this troubled age. Our failure to join most other nations in maintaining a formal diplomatic presence at the Vatican is a regrettable—and easily corrected—error.

The United States maintained a formal diplomatic mission to the Vatican from 1848 through 1867. In that year, for reasons rooted in part in the politics of Italian reunification, and in part in reaction to certain papal initiatives, the Congress voted to prohibit any expenditure of funds "for the support of an American legation at Rome." Although the original grounds for this action have long been historically obscure and politically irrelevant, this prohibition has lingered. Accordingly, U.S. relations with the Vatican have been maintained on an informal basis which, since 1939, excepting the Eisenhower and Kennedy administrations, has taken the form of personal or special representatives of the President to the Holy See. This is an awkward, artificial distinction which would be removed by this legislation. I urge all colleagues to consider cosponsorship of this legislation.

By Mr. BENTSEN (for himself, Mr. WALLOP, Mr. SYMMS, Mr. BRADLEY, Mr. GRASSLEY, Mr. MITCHELL, Mr. DURENBERGER, and Mr. BAUCUS):

S. 1758. A bill to amend the Internal Revenue Code of 1954 to provide a simplified cost recovery system based on recovery accounts, and for other purposes; to the Committee on Finance.

ACCOUNTING COST RECOVERY SIMPLIFICATION ACT OF 1983

Mr. BENTSEN. Mr. President, today I am introducing, along with Senators WALLOP, BRADLEY, SYMNS, MITCHELL, GRASSLEY, and DURENBERGER the Accounting for Cost Recovery Simplification Act of 1983. This act takes the existing accelerated cost recovery system enacted in 1981, itself a major simplification in the tax law, and simplifies it even further by providing an open-ended accounting system that is easier to use than the current asset-by-asset system.

The basic ACRS concepts are unchanged. Rapid acceleration of deductions and fixed, audit-proof recovery periods are retained. In addition, the bill will repeal the investment credit basis adjustment provision of TEFRA as well as the recapture provision of section 1245. Notwithstanding the repeal of the basis adjustment, the objective of insuring that present value benefits do not exceed $1 is preserved. In fact, they remain about the same as current law. For example, for 5-year property, assuming a 12-percent discount and 46-percent tax rate, the present value benefit of a $1,000 investment with basis adjustment is $448.19; under open accounts it is $448.27, a negligible difference.

The bill is a simplification project. The open-ended account system will be particularly beneficial for small businesses. It is similar to the system used in Canada and is strongly recommended by the American Institute of Certified Public Accountants. Although the bill loses revenue in the first fiscal year, 1985, over the 3 years 1984-86, it is about revenue neutral.

In addition to the simplification of the calculation of depreciation allowances, open-ended accounts defers, in most cases, the recognition of gain or loss on disposition of property.

PRESENT LAW

Under ACRS, the allowance for depreciation is computed on the unadjusted basis of each asset adjusted for one-half of the investment tax credit. In general, the recovery deduction in each year of the recovery period is determined by applying a statutory percentage to the basis of the property. The basis to which the percentage is

applied is the cost basis of the property reduced by 50 percent of the amount of regular and energy tax credits earned with respect to the property. Alternatively, taxpayers may elect a 2-percentage point reduction in the credit instead of the basis adjustment. The election is made on a property-by-property basis.

With certain limited exceptions, gain from the disposition of depreciable personal property is "recaptured" as ordinary income to the extent of the depreciation taken, section 1245. Gain in excess of depreciation taken may be treated as capital gains under section 1231 unless the gain is offset by losses on section 1231 assets.

PROPOSAL

An open account system would be established under ACRS for 3- and 5-year personal property to replace the present asset-by-asset accounting system for personal property. The basis concepts and recovery periods would be unchanged. The depreciable basis of recovery property is placed in one of two open-ended recovery accounts. Under an open-ended account system, the cost of all eligible property with the same recovery period are placed in the same open-ended account regardless of the year of acquisition. Used and new recovery properties are aggregated in the same recovery account.

The amount which is added to the recovery account is the taxpayer's unadjusted basis in the property. Thus, the new system will repeal current law one-half of the investment credit basis adjustment. Effective January 1, 1985, progress payments made toward the acquisition of assets which are being constructed by or for the taxpayer and which have a normal construction period of 2 years or more will be added to the appropriate recovery account if the taxpayer elects. The recovery periods of the two accounts correspond to the depreciation terms of 3 and 5 years.

The amount of allowable recovery deduction for any taxable year is generally computed by using a 150-percent declining balance method. The recovery deduction for a particular taxable year is then computed by multiplying the ending balance—unrecovered costs—in the recovery account by a recovery percentage. The maximum recovery percentage reflects the number of years in the recovery period and declining balance method. Thus the maximum percentage would be 50 percent—150 percent divided by 3-year—for 3-year property and 30 percent—150 percent divided by 5—for 5-year property. To provide flexibility, taxpayers may annually elect any percentage between the maximum recovery percentage and one-half of such percentage in the case of 5-year property, between 30 percent and 15 percent.

Additions would be made to an account, using the half-year convention, upon the placing in service of qualified assets or, if an election is made, the making of qualified progress expenditures. If the balance of an account at the end of a taxable year, but prior to computation of depreciation, is either zero or negative amount, no recovery reduction would be allowed for the year.

Gains and losses on the disposition of recovery property generally are deferred. Instead of immediate gain or loss recognition, the amount realized—generally the proceeds received—on the disposition will reduce the balance in the account which in turn, will reduce the amount of recovery deductions in the year of the disposition and subsequent years. If the balance in the account is reduced below zero, the negative amount generally will be taxed as gain from the sale of section 1231 property; that is, capital gain.

The open-ended account system will not apply to public utility property. The system will be effective for property placed in service after December 31, 1983.

CONCLUSION

In conclusion, the open-ended accounting system will greatly simplify depreciation accounting by reducing the number of accounts and by making them easier to manage as assets are acquired, depreciated, and disposed of. In addition, the complex rules of the investment tax credit basis adjustment and the need to separately account for gains and losses on disposition of assets, will be eliminated. Most importantly, it does not change the important concepts of ACRS.

Mr. President, we have all heard about the complexities of the Internal Revenue Code. The fact is that many of those complexities are necessary to prevent abuses. The bill we are introducing today provides for simplification without violating the integrity of the Tax Code.

This bill represents almost 1 year of work with different business groups, Joint Tax Committee staff, and Finance Committee staff to reach a concensus. I look forward to continuing to work with interest parties during the hearing process to develop a true simplification of a now very complex area of the tax laws.

I ask unanimous consent that the bill be printed immediately following my statement.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1758

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; CONFORMING AMENDMENTS.

(a) SHORT TITLE.—This Act may be cited as the "Accounting Cost Recovery Simplification Act of 1983".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The Secretary of the Treasury or his delegate, not later than 90 days after the date of the enactment of this Act, shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a draft of any technical and conforming amendments to the Internal Revenue Code of 1954 which are necessary to reflect the substantive amendments made by this Act.

SEC. 2. SIMPLIFIED ACCELERATED COST RECOVERY.

(a) IN GENERAL.—Section 168 of the Internal Revenue Code of 1954 (relating to accelerated cost recovery system) is amended as follows:

(1) Paragraph (1) of subsection (b) is amended to read as follows:

"(1) IN GENERAL.—Except as otherwise provided in this section, the amount of the deduction allowable by subsection (a) for any taxable year shall be the aggregate amount determined as follows—

"(A) POST-1982 RECOVERY PROPERTY.—In the case of post-1982 recovery property, by applying

"(i) the recovery percentage for each category of property, to

"(ii) the balance in the recovery account (as defined in subsection (j)) for such category at the end of such year.

"(B) OTHER RECOVERY PROPERTY.—In the case of recovery property other than post-1982 recovery property, by applying to the unadjusted basis of recovery property the applicable percentage determined in accordance with the following table.

	The applicable percentage for the class of property is:			
	3-year	5-year	10-year	15-year public utility
If the recovery year is:				
1	25	15	8	5
2	38	22	14	10
3	37	21	12	9
4		21	10	8
5		21	10	7
6			10	7
7			9	6
8			9	6
9			9	6
10			9	6
11				6
12				6
13				6
14				6
15				6

(2) Paragraph (3)(A) of subsection (b) is amended by—

(A) inserting "(B)" after "paragraphs (1)", and

(B) inserting "other than recovery property to which paragraph (1)(A) applies," after "during the taxable year,"

(3) Subsection (b) is amended by adding at the end thereof the following new paragraphs:

"(4) POST-1982 RECOVERY PROPERTY CATEGORY AND RECOVERY PERIOD.—

"(A) TABLE.—All post-1982 recovery property—

"(i) shall be placed in 1 of the categories set forth in the following table, and

"(ii) shall have the recovery period set forth for such category in the following table:

"Category	Recovery period (in years)
1	3
2	5

"(B) CATEGORIES OF POST-1982 RECOVERY PROPERTY.—Each item of post-1982 recovery property shall be assigned to one of the following categories of property:

"(i) CATEGORY 1 PROPERTY.—3-year property placed in service after December 31, 1982.

"(ii) CLASS 2 PROPERTY.—5-year property placed in service after December 31, 1982.

"(C) ELECTION TO PLACE PROPERTY IN CATEGORY HAVING NEXT LONGER RECOVERY PERIOD.—The taxpayer may elect to place in category 2 any item of post-1982 recovery property that (but for this subparagraph) would be in category 1.

"(5) POST-1982 RECOVERY PROPERTY RECOVERY PERCENTAGE.—For purposes of this section, the term 'recovery percentage' means, with respect to any category of post-1982 recovery property for any taxable year—

"(A) the percentage (not in excess of 150 percent or less than 75 percent) which the taxpayer elects for such category for such taxable year, divided by

"(B) the number of years in the recovery period."

(4) Subsection (c) is amended by adding at the end thereof the following new paragraph:

"(3) POST-1982 RECOVERY PROPERTY DEFINED.—The term 'post-1982 recovery property' means—

"(A) 3-year property, and

"(B) 5-year property

placed in service by the taxpayer after December 31, 1982, except that such term shall not include public utility property."

(5) Clause (i) of subsection (d)(1)(B) is amended by inserting "(1)(B) or subsection (J)(2)" after "subsection (b)".

(6) Subparagraph (A) of subsection (d)(2) is amended by inserting "(other than post-1982 recovery property)" after "recovery property".

(7) Subparagraph (B) of subsection (d)(2) is amended by inserting "post-1982 recovery property," after "(other than".

(8) Subsection (d) is amended by adding at the end thereof the following new paragraph—

"(3) SPECIAL RULES FOR PROPERTY NOT YET PLACED IN SERVICE.—

"(A) IN GENERAL.—Any qualified progress expenditure with respect to progress expenditure property shall be treated for purposes of this section as if such expenditure were property placed in service at the time the expenditure is made.

"(B) QUALIFIED PROGRESS EXPENDITURE; PROGRESS EXPENDITURE PROPERTY.—Except as provided in subparagraph (C), for purposes of this subsection, the terms 'qualified progress expenditure' and 'progress expenditure property' have the respective meanings given to such terms by subsection (d) of section 46 (relating to qualified progress expenditures for purposes of the investment credit).

"(C) EXCEPTION.—For purposes of this subsection, clause (ii) of section 46(d)(2)(A) shall be applied by substituting 'post-1982 recovery property' for 'new section 38 property'.

"(D) COORDINATION WITH PARAGRAPH (1).—The unadjusted basis of property which (but for this paragraph) would be first taken into account when placed in service shall be reduced (but not below zero) by any amount that was a qualified progress expenditure under this subsection with respect to such property.

(9) Redesignating subsection (j) as subsection (k) and adding after subsection (i) the following new subsection:

"(j) RECOVERY ACCOUNT.—

"(1) IN GENERAL.—The taxpayer shall establish a recovery account for each category of post-1982 recovery property.

"(2) ADDITIONS TO ACCOUNT.—The recovery account for any category of post-1982 recovery property shall be increased by an amount equal to the sum of—

"(A) one-half of the unadjusted basis of each recovery property in such category which is placed in service by the taxpayer during the taxable year, plus

"(B) one-half of the unadjusted basis of each recovery property in such category which was placed in service by the taxpayer during the preceding taxable year.

"(3) REDUCTIONS IN ACCOUNT.—

"(A) PROPERTY DISPOSED OF DURING YEAR.—The recovery account for any category of post-1982 recovery property shall be reduced by an amount equal to the amount realized on each recovery property of such category disposed of by the taxpayer during the taxable year.

"(B) AMOUNT ALLOWED UNDER THIS SECTION.—The recovery account for any category of post-1982 recovery property shall be reduced by an amount equal to the amount of the deduction allowed under subsection (a) with respect to such category.

"(4) TIME FOR MAKING ADJUSTMENTS.—

"(A) IN GENERAL.—Any adjustment under paragraph (2) or (3)(A) shall be made as of the close of the taxable year but before the determination of the amount allowable as a deduction under subsection (a) for such taxable year.

"(B) REDUCTION FOR DEDUCTION.—Any reduction under paragraph (3)(B) shall be made as of the beginning of the taxable year following the taxable year for which the amount was allowed as a deduction under subsection (a).

"(5) COORDINATION WITH OTHER PROVISIONS.—

"(A) DISPOSITIONS NOT TREATED AS DISPOSITIONS FOR CERTAIN PURPOSES.—For purposes of this title (other than this section and section 47), the disposition of any property in a recovery account shall be treated as if it were not a disposition.

"(B) NEGATIVE BALANCE.—If, as of the close of any taxable year, there is a negative balance in any recovery account then, notwithstanding any other provision of this subtitle—

"(i) and amount equal to the amount by which—

"(I) such negative balance (expressed as a positive number), exceeds

"(II) one-half of the basis of all recovery property in the category of post-1982 recovery property for which such account is established which was placed in service by the taxpayer during the taxable year,

shall be included in income for such taxable year as income under section 1231(a) (and section 1245(a)(1) shall not apply), and

"(ii) the balance in the account shall be adjusted by adding to the account an amount equal to the amount included in gross income under clause (i).

"(6) SEPARATE ACCOUNTS TO REFLECT PARTNERSHIP ALLOCATIONS AND ADJUSTMENTS.—Under regulations prescribed by the Secretary, separate recovery accounts shall be established to the extent necessary to reflect—

"(A) allocations under subsections (b) and (c) of section 704, and

"(B) adjustments to basis under section 734 or 743.

"(7) NO ADJUSTMENT WHERE PROPERTY DISPOSED OF BEFORE CLOSE OF TAXABLE YEAR IN WHICH PLACED IN SERVICE.—No adjustment shall be made under paragraphs (2) and (3)(A) in respect of any property which is disposed of by the taxpayer before the close of the taxable year in which placed in service by the taxpayer.

"(8) TRANSFERS AT DEATH.—No reduction shall be made under paragraph (3)(A) by reason of any transfer at death.

"(9) PROPERTY CEASING TO BE RECOVERY PROPERTY.—If any property taken into account under this subsection ceases to be recovery property during any taxable year—

"(A) such property shall be treated as disposed of by the taxpayer during such taxable year, and

"(B) the basis of such property in the hands of the taxpayer after such cessation shall be treated as equal to its fair market value.

"(10) DISPOSITIONS OTHER THAN SALE OR EXCHANGE.—If any post-1982 recovery property is disposed of in a disposition which is not a sale, exchange, or involuntary conversion and which is not described in paragraph (11) or (12), the reduction under paragraph (3)(A) for such disposition shall be the fair market value of the property disposed of. In the case of property disposed of by abandonment, the fair market value thereof shall be treated as if it were zero.

"(11) TRANSFERS WHERE BASIS GOES OVER.—

"(A) IN GENERAL.—If any post-1982 recovery property is transferred and the transferee's basis of such property is determined in whole or in part by reference to the adjusted basis of the transferor, then, under regulations prescribed by the Secretary—

"(i) the transferor's recovery account for the category of property in which the recovery property falls shall be reduced by the transferred amount, and

"(ii) for purposes of determining the transferee's basis in such property, the unadjusted basis of such property in the hands of the transferor shall be treated as equal to the transferred amount.

"(B) TRANSFERRED AMOUNT.—For purposes of subparagraph (A), the transferred amount shall be the amount which bears the same relation to—

"(i) the total amount in the transferor's recovery account immediately before the transfer, as

"(ii) the fair market value of the transferred property bears to the fair market value of all property in such account immediately before the transfer.

"(C) AUTHORITY TO PRESCRIBE ALTERNATE METHODS OF ALLOCATION.—The Secretary may by regulations prescribe alternate methods for allocating the balance in any recovery account for purposes of determining the transferred amount of any property.

"(12) LIKE KIND EXCHANGES; INVOLUNTARY CONVERSIONS.—Under regulations prescribed by the Secretary, in the case of any exchange described in section 1031 or 1033 of post-1982 recovery property—

"(A) if the properties fall in the same category changes shall be made in the taxpayer's recovery account for such category only to the extent necessary to reflect the money or other property (within the meaning of section 1031) or property not similar or related in service or use (within the meaning of section 1033), paid, exchanged, or received, as the case may be, and

"(B) if the properties fall in different categories, proper adjustments in the recovery accounts for both classes shall be made to carry out the nonrecognition provided for in such sections."

(b) REPEAL OF BASIS ADJUSTMENT FOR POST-1982 RECOVERY PROPERTY.—Subsection (q) of section 48 is amended by adding at the end therof the following new paragraph—

"(6) NO ADJUSTMENT IN THE CASE OF POST-1982 RECOVERY PROPERTY.—Subsection (a) shall not apply in the case of post-1982 recovery property as defined in section 168(c)(3)."

(c) TECHNICAL AND CONFIRMING AMENDMENTS.—

(1) Subsection (k) of section 312 is amended as follows:

(A) by inserting "and paragraph (6)" after "(B) and (C)" in paragraph (3)(A), and

(B) by adding at the end thereof the following new paragraph:

"(6) POST-1982 RECOVERY PROPERTY.—In the case of post-1982 recovery property (within the meaning of section 168), the adjustment to earnings and profits for depreciation for any taxable year shall be the amount determined under section 168 except that subsection (b)(5)(A) shall be 75 percent, and separate recovery accounts as described in subsection (j) shall be maintained for purposes of this section 312."

(2) Subsection (b) of section 1245 is amended by adding at the end thereof the following new paragraph:

"(9) POST-1982 RECOVERY PROPERTY.—Subsection (a) shall not apply in the case of income recognized under section 168(j)(5)(B)(i)."

(3) Paragraph (7) of section 46(c) is amended by adding at the end thereof the following new sentence: "Subparagraph (A) shall apply to any item of post-1982 recovery property which the taxpayer elects (under section 168(b)(4)(C)) to place in category 2.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by subsections (a), (b) and (c) shall apply to property placed in service by the taxpayer after December 31, 1982, in taxable years ending after such date.

(2) QUALIFIED PROGRESS EXPENDITURES.—The amendment made by section (a)(8) shall apply to qualified progress expenditures made by the taxpayer after December 31, 1985, in the taxable years ending after such date.

(3) BASIS ADJUSTMENT REPEAL.—The amendments made by subsection (c) shall apply to periods after December 31, 1982, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1954.

Mr. WALLOP. Mr. President, I join with my good friend and colleague from Texas, Senator BENTSEN, in the introduction of the Accounting Cost Recovery Simplification Act of 1983. This legislation, as the Senator from Texas has explained, calls for the establishment of open end accounts for the purpose of computing depreciation deductions under the Federal Tax Code. In addition, the half basis adjustment provisions of the Tax Code, enacted just last year as a part of the Tax Equity and Fiscal Responsibility Act (TEFRA), would be repealed, and depreciation deductions would be allowed for qualified progress expenditures.

As my colleagues are well aware, during the past 2 years we have seen two major tax bills which had and will continue to have a profound impact on business taxation. While the pros and cons of each can be debated, if you are a businessman trying to make long-term planning decisions, uncertainty in the tax law makes that process more a game of Russian roulette than an exercise of business foresight. Certainty in the tax planning process may very well be as important as the tax laws themselves. In the last 2 years we have taken that element of certainty away from business, and it was for that reason that I have made a commitment to the business community that I would not support legislation this year which they did not feel was beneficial or in their long-term best interests. The introduction of this legislation does not represent a departure from that commitment.

Mr. President, Senator BENTSEN and I have worked on this idea over the course of many months. But as anyone who has followed depreciation legislation on the Hill can tell you, this is by no means a new idea. Open end accounts have been discussed for years, and indeed were incorporated in the Tax Reduction Act of 1980 which was reported from the Finance Committee but never enacted. The concept of open accounts is generally acknowledged as an effective tax simplification tool, especially for small business concerns who, as a matter of simple economics, do not have the sophisticated resources available to them to fully understand our present Tax Code. At a time when both tax writing committees of the Congress are seeking ways to simplify the Tax Code, the introduction of this legislation could not be more timely. This bill is certainly introduced in that spirit. The fundamental provisions of the President's tax initiatives remain intact with this legislation. The rate of depreciation presently provided by ACRS is not changed, nor are the ACRS property life classifications. And, with the repeal of the half basis adjustment it is our intent that the present value of depreciation allowances allowed under current law remain generally the same. The inclusion of depreciation deductions for qualified progress expenditures and maximum flexibility in the timing of depreciation deductions are all provisions which are designed to help business, small and big alike. Certainly, these concepts deserve everyone's full consideration.

I would like to point out to my colleagues that while this bill represents many hours of drafting and attempts to deal with the problems we have confronted along the way, it is just the beginning of the process. There may very well be impacts caused by this legislation which we have not focused on or considered. Clearly, it is not our intent in offering this legislation to take anything away from anybody. Indeed, it is our intent to provide the same benefits as are currently received under the current depreciation system, but in a manner which is easier to implement and more flexible in its operation.

The Senator from Texas has offered a very good explanation of the major provisions of this bill. In substance, the use of open account depreciation would result in far fewer accounts for business to maintain and the IRS to audit. The extremely complicated recapture rules on depreciation and the half basis adjustment would be repealed. The half basis adjustment itself is repealed by this bill. In addition, depreciation on qualified progress expenditures would be allowed for the first time. All of these concepts I believe to be beneficial to American business, especially our small business interests.

Mr. President, I would like to assure our business community that this is not the "cod liver oil" of the 98th Congress. We are not going to push this legislation through the Finance Committee or the full Senate telling business we are doing this for their own good. As I mentioned before, there must be broad, general support for this legislation before I will actively seek its enactment. What I do ask however, is that the business community take a very hard look at this bill. Tell us what is wrong with the legislation and how we can make it better. If aspects of the bill are particularly attractive let us know that as well. I would caution everyone though, that I know there are several individual provisions within this package which are very attractive to a lot of business interests. What we will not do is allow this package to be taken apart so that the focus is on the individual provisions rather the entirety of the bill itself. Qualified progress expenditure depreciation is attractive to some. Repeal of the half basis adjustment is attractive to many. Maximum flexibility in the timing of depreciation deductions is attractive to yet others. All of these provisions are offered as vital parts of the entire package, and should be viewed by all as just that.

In conclusion Mr. President, I would simply note that there are very few times when I can remember a ground swell of support and lobbying for business tax simplification. I do not believe that is based so much on the fact that it is not desirable, but that when the rules of the game keep changing it is difficult to support yet another change; even if it is good legislation. The AICPA has long supported open accounts, and we found very little opposition to the idea as we began to develop this legislation. I would urge everyone, especially small business orga-

nizations like the NFIB, to examine this legislation very closely. It is my belief that a fair examination will reveal that this proposal offers a very real opportunity to reduce some of the vast complication businesses face on a day-to-day basis with the Internal Revenue Code.

By Mr. SYMMS:

S. 1759. A bill to extend for 3 years the suspension of duty on 4-chloro-3-methylphenol; to the Committee on Finance.

DUTY ON 4-CHLORO-3-METHYLPHENOL

Mr. SYMMS. Mr. President, I am introducing legislation today which would suspend the duty of 4-chloro-3-methylphenol until June 30, 1987.

Section 230 of Public Law 97-446, enacted January 12, 1983, provides for the temporary suspension of the column 1 rate of duty on 4-chloro-3-methylphenol through June 30, 1984. This suspension should be extended through June 30, 1987, for the reasons set forth below.

4-chloro-3-methylphenol is a chemical substance used in production of a number of products including machine cutting oils. It has not been produced in the United States since 1973. Domestic consumers must rely on imports for their needs of the chemical. Master Chemical, for example, must import 4-chloro-3-methylphenol for use as an emulsion stabilizer in the production of one product which constitutes 60 percent of its business.

If a duty were to be again applied, it would be at a rate significantly higher than that in effect prior to enactment of the Trade Agreement Act of 1979.[1] This act doubled the duty on 4-chloro-3-methylphenol in 1980 so that its cost increased as much as 17.4 percent to domestic consumers. Thus failure to extend the suspension would cause substantial harm to domestic consumers of the chemical through increased prices while causing no benefit to accrue to domestic producers.

DESCRIPTION AND USES

4-chloro-3-methylphenol, sometimes referred to as P-chloro-meta-cresol, is an organic chemical used primarily as a biocide and antioxidant in the manufacture of machine cutting oils. It is also used as an ingredient in such products as dandruff shampoos and hand lotions, as a preservative for sensitive film such as microfilm and X-ray film, and as an intermediary in the formulation of more complex chemicals.

DOMESTIC COMPETITION

According to the domestic consumers of 4-chloro-3-methylphenol, there are no domestically produced chemicals which can be substituted for 4-chloro-3-methylphenol in the manufacture of machine cutting oils.[2] Nor are there substitutes which can be used as chemical intermediaries in the formulation of specific chemicals.

DOMESTIC PRODUCTION

There has been no domestic production of 4-chloro-3-methylphenol since 1973. In that year the Ottawa Chemicals Division of Ferro Corp. halted production due to increasingly stringent environmental regulations.

TARIFF TREATMENT

Prior to the temporary suspension of duty, 4-chloro-3-methylphenol entered the United States under item 403.56 of the tariff schedules of the United States (TSUS). This item is a residual category of phenol derivatives which are listed in the chemical appendix of the tariff schedules.

With the suspension of duty, 4-chloro-3-methylphenol was removed from TSUS item 403.56. A new TSUS item, No. 907.08, was created for it under subpart B of part 1 of the appendix to tariff schedules.

If the suspension is not extended, 4-chloro-3-methylphenol would again be dutiable at the rate applicable to TSUS item 403.56. In 1984 the column 1 rate for item 403.56 (the rate paid by countries with most-favored-nation status), will be 1.1 cents per pound plus 19.4 percent ad valorem. This rate is scheduled to decline annually until it reaches 0.7 cent per pound plus 19.4 percent ad valorem in 1987. This is nonetheless still significantly above the rate that was applicable to 4-chloro-3-methylphenol in 1979. At that time the rate was 1.7 cents per pound plus 12.5 percent ad valorem.

Other rates of duty applicable to TSUS item 403.56 are an LDDC rate[3] of 0.7 cent per pound plus 19.4 percent ad valorem and a column 2 rate of 7 cents per pound plus 62 percent ad valorem.[4] These rates were unaffected by the legislation granting temporary suspension of duty on 4-chloro-3-methylphenol.

U.S. IMPORTS

Imports in the United States of 4-chloro-3-methylphenol for 1980 and 1981 were as follows:

[Quantity in pounds]

Year:[5]	*Quantity*[5]
1980	106,293
1981[6]	274,472

LOST REVENUE

Prior to enactment of the initial temporary suspension of duty, the International Trade Commission estimated that total lost revenue for the years 1981-83 would be $323,400. The lost revenue figure for the next 3 years should be close to this figure since usage patterns appear similar.

POSITION OF AGENCIES

The Department of Commerce, the Department of State, and the International Trade Commission had no objection to the initial suspension of duty. Although their position regarding an extension of the suspension is not explicitly known at this time, there is little reason to suppose that the extension would be opposed since no material parameters have changed since January 12, 1983, when Public Law 97-446 was enacted.

CONCLUSION

For all the above reasons, but primarily because there is no domestic producer of 4-chloro-3-methylphenol to derive benefit from reimposition of a duty on the chemical, I urge that the suspension of duty be extended to June 30, 1987.

By Mr. BENTSEN:

S. 1760. A bill entitled the "Pension Correction Act of 1983"; to the Committee on Finance.

PENSION CORRECTION ACT OF 1983

Mr. BENTSEN. Mr. President, the Tax Equity and Fiscal Responsibility Act of 1982 had as its avowed purposes the prevention of excess accumulations of tax-deferred funds by high-income individuals, to reduce incentives to use pension plans as a method of sheltering income from tax, and to eliminate artificial distinctions, and to create more parity between corporate and noncorporate pension plans. However, certain provisions in TEFRA have harsh results. In addition, TEFRA itself creates artificial and discriminatory distinctions between large and small plans.

It is my belief that relief from these provisions of TEFRA must be achieved or the result will be to discourage the establishment and or maintenance of small employer plans.

Most of the pension law changes contained in TEFRA do not take effect until January 1, 1984. The purpose of this delayed effective date was to allow the committees to study the changes and to make adjustments where necessary. The bill I am introducing today is a result of a hearing held earlier this year by Senator CHAFEE's Subcommittee on Savings, Pensions, and Investment Policy of the Senate Finance Committee. This bill will leave in place the basic principles of the TEFRA changes while

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[1] The Trade Agreement Act of 1979 created several "Basket" categories of benzenoid derivatives and based the new rate of duty on an average of the ad valorem equivalents of the individual items. As a result, certain items which had been assessed at a low tariff rate were assessed at a much higher rate after 1979.

[2] USITC's memorandum to the Committee on Ways and Means of the House of Representatives on H.R. 2786, 97th Cong., May 26, 1981, p. 2.

[3] The LDDC rate is the rate paid by least developed developing countries.

[4] The col. 2 rate applies to Communist and areas enumerated in general headnote 3(f) of the TSUS.

[5] International Trade Commission, imports of benzenoid derivatives.

[6] 1981 is the latest year for which the ITC has data.

helping to make the pension laws more workable and fairer in there application to small employers.

Mr. President I ask unanimous consent that a fact sheet describing the bill and the bill itself be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FACT SHEET ON PENSION CORRECTIONS ACT OF 1983—REDUCTION IN PLAN AMENDMENT DUPLICATION

PRESENT LAW

In general, under Internal Revenue Code Sec. 401(b), the remedial period for amending a retirement plan to comply with any change in plan qualification requirements due to amendment to the Internal Revenue Code is the due date of the Employer's federal income tax return, including extensions for the tax year in which such new qualification requirements are effective. In practice, however, it has been difficult for the Treasury Department to promulgate final regulations after an amendment to the IRC prior to such remedial amendment deadline. The Treasury Department has generally issued temporary regulations in the interim to provide Employers and Plan Sponsors with guidelines for amending their retirement plans. In many instances, when final regulations are eventually issued, variances between the temporary and final regulations have required the Employers and Plan Sponsors to amend their plans a second time and re-submit for qualification determination to the Internal Revenue Service. Examples of instances in which second amendment submissions have been required because of variances between final and temporary regulations include joint and survivor annuity rules, hours of service rules, controlled group rules, normal retirement rules, benefit limit rules, suspension of benefit rules, and definitely determinable benefit rules.

PROPOSAL

The Bill adopts a simplified interim amendment process. Employers will be considered to have timely amended their plan if, by the remedial amendment deadline under IRC § 401(b), a short form amendment incorporating specific changes in the Code is adopted by reference and notice of the adoption of the amendment is sent to the Internal Revenue Service. Thereafter, employers will have no less than one year following the issuance of final regulations to submit plan amendments to the Internal Revenue Service, retroactive to the effective date of any amendments to the Internal Revenue Code.

REASON FOR CHANGE

The Bill will reduce the administrative burden on both Employers and on the Internal Revenue Service by eliminating the duplication of amendment submission to the Internal Revenue Service. Many Employers have been discouraged from continuing employee benefit plans because of the constant need for plan revisions which involve added expense and unnecessary labor.

PARTICIPANT LOAN TRANSITION RULE

PRESENT LAW

In general, under IRC Sec. 72(p), a loan by a Plan to a participant will be considered as a taxable distribution unless the amount of the loan does not exceed the lesser of fifty percent (50%) of the debtor participant's vested accrued benefit or $50,000, and the repayment period does not exceed five (5) years. Participant loans made on or before August 12, 1982, are excepted from such rule. A limited transition rule for certain qualifying refunding loans expires on August 13, 1983.

PROPOSAL

The Bill provides for the renewal and extension for a period of five (5) years to any participant loan (regardless of amount) entered into prior to August 12, 1982, which matures prior to August 13, 1985, without subjecting the borrowing participant to taxation. Such renewal loans must provide at least for repayments of interest and principal in equal, annual installments and must be repaid in full no later than five years from the date of renewal. During the repayment period of the renewal loan, the outstanding balance of such renewal loan must be taken into account for purposes of the 50%/$50,000 limit in determining whether a subsequent loan is a taxable distribution.

REASON FOR CHANGE

The transition rule created under the bill will provide relief for plan participants who were caught unexpectedly by the imposition of the new participant loan limitations. In many instances, corporate fiduciaries have required that all participant loans mature in no more than one year. This requirement was often due to a desire by fiduciaries at a time of violent interest rate fluctuations to adjust annually the loan interest rate in order to meet the requirement of prior law that such loans bear a "reasonable" rate of interest. Therefore, many participants who intended to repay loans over several years agreed to one-year maturities with the understanding that such loans would be renewed in part and repaid in part. The transition rule accomplishes the purposes of TEFRA in eliminating participant loan abuses without resulting in participant loan defaults because of the immediate and unexpected application of the new loan limitations.

ELIMINATION OF 10 PERCENT PENALTY ON EARLY PLAN DISTRIBUTIONS

PRESENT LAW

Internal Revenue Code Sec. 72(m)(5) imposes a ten percent (10%) penalty on distributions made to a key employee of a top-heavy plan prior to age 59½ by reason other than death or disability.

PROPOSAL

The Bill would repeal Sec. 72(m)(5).

REASON FOR CHANGE

The ten percent (10%) penalty under Sec. 72(m)(5) will apply in operation only to plans maintained by small employers. Such a discriminatory result would conflict with one of the objectives of TEFRA, which is to create parity between large and small employer plans. There is also concern that it could discourage the establishment of plans by small employers. The Bill will result in removing the disparity in treatment between distributions from plans maintained by large and small employers.

VESTING REQUIREMENTS FOR TOP-HEAVY PLANS

PRESENT LAW

In the case of a top-heavy plan as defined under IRC Sec. 416, the present law provides that such a plan must provide for one of the following minimum vesting requirements.

(a) Upon completion of three (3) years of service with the Employer, the participant is 100% vested (3 Year Vesting); or

(b) A vesting schedule under the following schedule known as 6 Year Graded Vesting:

Years of service:	*Nonforfeitable percentage*
2	20
3	40
4	60
5	80
6	100

PROPOSAL

The Bill would substitute for the six (6) year graded vesting requirement the following schedule known as the 4–40 Rule.

Years of service:	*Nonforfeitable Percentage*
4	40
5	45
6	50
7	60
8	70
9	80
10	90
11	100

REASON FOR CHANGE

Congress has previously expressed the position that a vesting schedule no more favorable than the 4–40 Rule should be required of any qualified employer plan. The Bill amends Sec. 416 to coincide with this view. Six (6) year graded vesting often encourages employee attrition. Moreover, long-term employment is not rewarded but penalized. Finally, increased employee turnover raises the cost for small employers to maintain a retirement plan and thus discourages the establishment or continuance of these plans.

REMOVAL OF CERTAIN BENEFIT LIMITATION RESTRICTIONS IN SMALL AND LARGE EMPLOYER PLANS

PRESENT LAW

Under IRC Sec. 416(h), a top-heavy plan is subject to a lower benefit limitation under IRC Sec. 415(e) (dealing with coordination of the defined benefit and defined contribution plans) unless certain minimum benefits are provided to rank-and-file employees. However, if the benefits accrued for key employees are equal to 90% or more of the aggregate benefits of all employees, then more severe lower benefit limitations apply whether or not the higher minimum benefit requirements are met. In addition, Sec. 416(h)(4) provides for a lower dollar limitation to be used in the case of a top-heavy plan for the special transition rules contained under Sec. 415(d)(6).

PROPOSAL

The Bill would repeal Sec. 416(h)(2)(B) which imposes a lower limitation on top-heavy plans in which 90% or more of the aggregate benefits are received by key employees. In addition, it amends Sec. 416(h)(4) to provide that the lower limitation to the special transition rule under Sec. 416(d)(6) applies only in cases in which the minimum benefit requirement under Sec. 416(h)(2)(A) are not provided.

REASON FOR CHANGE

The purpose of Sec. 416 is to eliminate excessively high benefits for key employees while at the same time providing minimum benefits to rank-and-file employees. However, the following safeguards exist to assure these objectives are met:

(a) the lower benefit limits under IRC Sec. 415,

(b) the compensation limitations under Sec. 416(d) for key employees,

(c) the general non-discrimination in benefits provisions of Sec. 416(a)(4), and

(d) the minimum benefit requirements of Sec. 416(c) and (h)(2)(A).

The 90% limitation is counterproductive because it discourages Employers from providing the higher minimum benefits in many of the plans Sec. 416 was intended to reach, a result contrary to Congress' intent. So long as the minimum benefits under Sec. 416(h)(2)(A) are provided, all plans should be subject to the normal limitations contained in Sec. 415 of the Code.

ESTATE TAX EXCLUSION FOR RETIREMENT BENEFITS

PRESENT LAW

Under Internal Revenue Code Sec. 2039(c), certain employee-derived retirement benefits are excluded from the gross estate of an employee decedent. The exclusion is subject to a limitation in the amount of $100,000 imposed by Sec. 245 of TEFRA effective for decedents dying after December 31, 1982.

PROPOSAL

The Bill provides that the $100,000 limitation under 2039(g) will not be applicable in any instance in which the annuity or other payment entitled to exclusion under IRC Sec. 2039(c) was subject to an irrevocable election as to the contingent or death beneficiary by the participant in effect prior to August 13, 1982.

REASON FOR CHANGE

Prior to the enactment of Sec. 2039(g), participants could elect irrevocably to receive their benefits under various alternative payment modes designating a contingent beneficiary other than their spouse and be assured of favorable estate tax treatment. As a result, such benefits could be directed to disabled children and elderly parents without reduction for death taxes. The Section 2039(g) limit unduly penalizes such employees who in good faith reliance on prior law made such irrevocable election in contrast to the treatment of participants who have made revocable elections and may change them at any time to take advantage of marital deductions. The Bill would provide an exception to the $100,000 limitation in those instances in which a participant is unable to change a beneficiary designation because of a binding election made prior to August 13, 1982.

S. 1760

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Pension Correction Act of 1983".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 2. SIMPLIFIED AMENDMENT PROCESS FOR RETROACTIVE CHANGES IN PENSION PLANS.

Section 401(b) (relating to certain retroactive changes in plans) is amended—

(1) by inserting "(1) IN GENERAL.—" before "A stock bonus", and

(2) by adding at the end thereof the following new paragraph:

"(2) Extension of period until final regulations are issued.—

"(A) IN GENERAL.—In any case in which—

"(i) the Secretary has not issued final regulations with respect to any requirement of subsection (a), and

"(ii) the plan—

"(I) incorporates such requirement by reference to this title or any temporary regulation issued under this title, and

"(II) notifies the Secretary in writing of such incorporation in such manner as the Secretary may prescribe,

the Secretary shall extend the period under paragraph (1) to at least the date described in subparagraph (B).

"(B) Extension date.—The date referred to in this subparagraph is the later of—

"(i) the date which is 6 months after the date on which the final regulations described in subparagraph (A) were issued, or

"(ii) the due date including extensions for filing the return of tax of the employer for the taxable year in which such final regulations are issued.".

SEC. 3. TRANSITION RULE FOR CERTAIN PARTICIPANT LOAN RENEWALS.

Subsection (c) of section 236 of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by adding at the end thereof the following new paragraph:

"(4) EXCEPTION FOR QUALIFIED RENEWAL LOANS.—

"(A) IN GENERAL.—Any qualified renewal loan shall not be treated as a distribution by reason of the amendments made by this section to the extent such loan is repaid before August 14, 1988.

"(B) QUALIFIED RENEWAL LOAN.—For purposes of subparagraph (A), the term 'qualified renewal loan' means any loan which—

"(i) renews and extends any loan which—

"(I) was made before August 12, 1982, and

"(II) by its terms was due and payable before August 13, 1985, and

"(ii) provides for repayment of principal and interest in equal installments which are required to be made at least annually.".

SEC. 4. ELIMINATION OF 10 PERCENT PENALTY APPLICABLE TO CERTAIN PLAN DISTRIBUTIONS.

Paragraph (5) of section 72(m) (relating to penalties applicable to certain employees) is repealed.

SEC. 5. CHANGE IN VESTING REQUIREMENTS FOR TOP-HEAVY PLANS.

Subparagraph (B) of section 416(b)(1) (relating to vesting requirements) is amended to read as follows:

"(B) 11-YEAR GRADED VESTING.—A plan satisfies the requirements of this subparagraph if an employee has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

"Years of service:	*Nonforfeitable Percentage*
4	40
5	45
6	50
7	60
8	70
9	80
10	90
11	100.".

SEC. 6. REMOVAL OF CERTAIN BENEFIT LIMITATION RESTRICTIONS.

(a) IN GENERAL.—Paragraph (2) of section 416(h) (relating to adjustments in section 415 limits for top-heavy plans) is amended to read as follows:

"(2) EXCEPTION WHERE ADDITIONAL CONTRIBUTIONS ARE MADE FOR NON-KEY EMPLOYEES.—Paragraph (1) shall not apply with respect to any top-heavy plan if the requirements of subparagraphs (A) and (B) of this paragraph are met with respect to such plan.

"(A) MINIMUM BENEFIT REQUIREMENTS.—The requirements of this subparagraph are met with respect to any top-heavy plan if such plan (and any plan required to be included in an aggregation group with such plan) meets the requirements of subsection (c), as modified by subparagraph (B).

"(B) MODIFICATIONS.—For purposes of subparagraph (A)—

"(i) paragraph (1)(B) of subsection (c) shall be applied by substituting '3 percent' for '2 percent' and by increasing (but not by more than 10 percentage points) 20 percent by 1 percentage point for each year for which such plan was taken into account under this subsection, and

"(ii) paragraph (2)(A) of subsection (c) shall be applied by substituting '4 percent' for '3 percent'.".

(b) CONFORMING AMENDMENT.—Section 416(h) is amended by inserting before the period at the end of paragraph (4) the following: ", if the minimum benefit requirements of section 416(h)(2)(A) are not met".

SEC. 7. CERTAIN IRREVOCABLE ELECTIONS EXEMPT FROM LIMITATION ON ESTATE TAX EXCLUSIONS.

Section 2039(g) is amended by adding at the end thereof the following new sentence: "In determining the aggregate amount under the preceding sentence, there shall not be taken into account the amount of any annuity or other payment which is so excluded to the extent such amount is attributable to an irrevocable election made before January 1, 1983.".

SEC. 8. EFFECTIVE DATES.

(a) SECTION 2.—The amendments made by section 2 shall apply to periods ending on or after the date of the enactment of this Act.

(b) SECTION 3.—The amendment made by section 3 shall apply as if included in section 236(c) of the Tax Equity and Fiscal Responsibility Act of 1982.

(c) SECTIONS 4, 5, and 6.—The amendments made by sections 4, 5, and 6 shall apply to taxable years beginning after December 31, 1983.

(d) SECTION 7.—The amendment made by section 7 shall apply to estates of decedents dying after December 31, 1982.

By Mr. MOYNIHAN (for himself, Mr. WALLOP, and Mr. SYMMS):

S. 1761. A bill to amend the Internal Revenue Code to permit foreign pension plans to invest in the United States on a nontaxable basis; to the Committee on Finance.

INVESTMENT BY FOREIGN PENSION PLANS IN THE UNITED STATES

● Mr. MOYNIHAN. Mr. President, I rise today with my distinguished colleague from Wyoming, Senator WALLOP, to introduce legislation to exempt foreign pension trusts from U.S. tax on their investment income.

We offer this legislation for several reasons. Private pension systems in Great Britain, the Netherlands, Japan, and other countries hold hundreds of billions of dollars in assets. In the United Kingdom alone, the amount is some $40 billion. In the Netherlands estimates vary, but some 2 years ago

one of that country's leading newspapers put the value of private pension assets there at $100 billion. Japan, Sweden, Denmark, and Canada also have large funded plans.

Little of this money is invested in the United States today, and the reason is clear. Foreign pension trusts, like their U.S. counterparts, are exempt from tax on most income earned in their home countries. Why, then, invest in a foreign market—even one with as attractive long-term appreciation prospects as the American one—when the income will be subject to tax? This legislation would essentially make the tax law neutral, permitting foreign pension plans to distribute their investments between the United States and their home countries with reference chiefly to the relative prospects of the markets.

Once the tax disincentive to foreign pension trust investment in our market is removed by this legislation, the pool of capital from which real investments are made in the United States will grow. This feature of our legislation—the prospect of actually increasing the pool of capital in the United States—distinguishes it from most other recent capital formation proposals. Most other proposals merely shift capital from one sector of the economy to another. The 1981 depreciation changes, for example, raised one's potential rate of return for the purchase of depreciable assets. It encouraged investors, when they draw up a list of possible future investments, to consider depreciable assets more favorably than in the past. Some other investments, however, must move over. Thus money would go into commercial buildings, machinery, and other depreciable assets, instead of other investments. There is a redistribution of capital, but little change in total investment.

This legislation should actually increase the overall supply of capital in the United States, bringing in new money from abroad. This makes it an unusual and attractive capital formation proposal.

The suggestion that foreign pension trusts should be untaxed on income earned in the United States is consonant with other aspects of our tax system. Generally speaking, U.S. pension trusts are not taxed, provided a trust is part of a qualified plan, a pension arrangement that meets the funding, vesting and other standards described in section 401(a) of the Federal Tax Code. A foreign pension trust, on the other hand, is taxed under current law. The rates vary. Often 30 percent of the foreign trust's income is withheld at the source. Where tax treaties apply, the rates on most dividend and interest income have been reduced to 15 percent or 10 percent, or even zero.

Our bill would merely make the policy of this government the position that income earned by U.S. and foreign pension trusts should be taxed in a similar fashion.

Let me point out, Mr. President, that foreign governments would be expected to reciprocate. The President would have the authority to withdraw the tax exemption from any foreign trust if the country in which the trust is based refused to reduce its taxes on U.S. pension trusts investing there. This legislation is a carrot; in the absence of reciprocation, we intend that the carrot should disappear.

Now, let me review the principal provisions of this legislation.

The bill would add a new subparagraph to section 501(c) of the Federal Tax Code. A trust, corporation, or fund that is part of a foreign pension plan would be exempted from Federal income taxes if it passed three tests. The plan of which the trust, corporation or fund is a part must be established and operated primarily to provide retirement or similar benefits. It also must be predominantly for individuals who are not American citizens and who are not living in this country. The plan's assets further must be kept separate from the assets of the employer, in accordance with the laws of the country where the plan is maintained. And the income of the plan must be taxed at preferential rates, or not at all, in the home country.

The bill would also make clear that the tax exemption is subject to adjustment under section 896 of the Federal Tax Code. Section 896(b) directs the President to act whenever he finds that a foreign country is taxing U.S. citizens or corporations more heavily than the United States taxes nationals of the same country. The President must ask the foreign country to eliminate (the) higher effective rate of tax. If that fails to elicit a reciprocal response, the President shall proclaim that the U.S. taxes on the foreign nationals in question will be increased. The Senate and the House of Representatives must be given 30 days' notice.

The exemption from tax, I should add, would not apply to income earned by a foreign pension plan from any interest in farmland. Accordingly, this legislation would not provide an incentive for foreign pension plans to buy up the farmland of this country. The incentive instead is channeled into the paper assets of American corporations. Foreign pension plans, moreover, would be subject to the unrelated business income tax, described in sections 511–514 of the code, to the same extent as our own pension plans.

Finally, subsection (c) of this legislation would add a new category, called pension plan reserves to section 805(d) of the Federal Tax Code. This is necessary to eliminate the tax at the insurance company level which would be incurred with respect to amounts held for qualifying foreign pension plans. Under current law, financial intermediaries other than life insurance companies would not be subject to tax at the intermediary level for income earned on behalf of foreign pension plan funding arrangements. But because of the way in which life insurance company tax provisions are structured, a tax would be imposed on investment income earned on assets held in a life insurance company's separate account for foreign pension plans. This subsection, then, simply places life insurance companies on the same tax basis as other U.S. financial intermediaries that would manage the invested assets of foreign pension plans.

The legislation also includes a technical amendment to section 401 of the code, to permit foreign pension plans to participate in a group trust without affecting the tax-exempt status of the group trust, so long as the group trust continues to meet the requirements of section 401.

Those are the key provisions. The bill would take effect with respect to income earned on or after January 1 of this year.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1761

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 501(c) (relating to organizations exempt from tax under section 501(a)) is amended by adding the following new paragraph:

"(24) A trust, corporation or fund which is formed pursuant to, or as part of, a foreign pension plan which satisfies the following requirements—

"(A) the plan is maintained primarily to provide retirement or similar benefits to employees who are primarily nonresident alien individuals;

"(B) the assets of the plan are segregated from the assets of the employer or employers maintaining the plan pursuant to the laws of the foreign country in which such plan is maintained; and

"(C) under the laws of the foreign country in which the plan is maintained, the income of the plan is exempt from tax or is subject to a lower rate of taxation than is generally imposed on other residents of such foreign country.

The exemption provided by this paragraph shall not apply to income or gain derived by a foreign pension plan from any interest (as defined in regulations prescribed by the Secretary) in land used in farming (as defined in section 175(c)(2)). The exemption provided by this paragraph also shall be subject to adjustment under section 896 (relating to the adjustment of tax of nationals of foreign countries), and no later than January 1, 1986, the President shall report to Congress on the extent to which he has exercised the authority under that section with respect to relief from foreign income taxes for plans described in section 401(a). If all of

the assets of a trust, corporation or fund are held for the benefit of one or more foreign pension plans described in this paragraph, such trust, corporation or fund shall itself be considered to satisfy the requirements of this paragraph.".

(b)(1) Section 512(a)(2) (relating to the unrelated business taxable income of certain foreign organizations) is amended by inserting "or section 501(c)(24)" immediately after "section 511".

(2) Section 514(c)(9) (relating to unrelated debt-financed income of qualified trusts) is amended by deleting the period at the end thereof and adding the following "or any foreign pension plan described in section 501(c)(24).".

(c) Section 805(d) (relating to pension plan reserves of life insurance companies) is amended by adding the following new paragraph:

"(7) purchased by a foreign pension plan (within the meaning of section 501(c)(24)), except that, for purposes of section 801(g)(7), any asset of a segregated asset account which constitutes land used in farming (as defined in Section 175(c)(2)) shall not be considered to be held with respect to a contract described in this subsection if such contract is described only in this paragraph of this subsection.".

(d) The amendments made by this Act shall become effective on January 1, 1983.●

● Mr. WALLOP. Mr. President, in the last Congress Senator MOYNIHAN and I introduced legislation which would have exempted foreign pension trusts from U.S. taxation on the investment income generated within the United States. The bill we are introducing today is a renewal of that past effort, with some modification with respect to U.S. farm and ranch lands.

With mounting deficits in this country, the borrowing demands of our own Federal Government threaten to absorb almost every available cent of investment capital. As our economy continues to climb from the grips of the past recession and establishes a pattern of strong and steady growth the competition for the available investment capital, after the Federal Government has satisfied its borrowing needs, is going to be intense. As available capital becomes more and more scarce, the cost of that capital will rise. Increasing interest rates, as we have just witnessed, is a sure fire way to weaken the vigor of a healthy economy.

Billions of dollars are held in the pension trusts of many European countries, as well as Japan. Little of the money is invested in the United States, and little will be invested as long as the income from investments in their own country are given preferential tax treatment compared with that offered in the United States. Those countries, like the United States give pension trusts a tax-exempt or tax-preferred status with respect to their domestic investments. Those billions of dollars sitting in foreign pension trusts offer an unique capital formation opportunity for this country. Like few other capital formation ideas, this bill does not create new incentives for the use of currently available capital. but instead creates the incentive to bring in entirely new sources of investment capital. A growing economy, especially at a time of increased Federal borrowing demands, must have reliable sources of capital at its disposal or the growth, almost by definition, will be significantly restricted.

Although not included in the legislation as introduced in the last Congress, there was a firm understanding between Senator MOYNIHAN and me that while we felt it important for the United States to have the opportunity to use the investment capital held by foreign pension trusts, those funds should not be directed toward investments in American farm and ranch lands. This legislation would specifically exclude such investments from being made. In addition, if another nation's tax policy does not provide similar treatment for American pension trust investments, the tax treatment offered by this legislation, in the discretion of the President, would be withdrawn for the nonreciprocating country.

In conclusion, let me note that I believe this legislation offers a very real opportunity to attract new investment capital to the American economy. With the Federal deficit siphoning off billions of dollars which would otherwise be used for private investment, it is vitally important that we seek to remove those obstacles which may prevent new sources of capital from being put to work within our borders. I encourage all of my colleagues to give this legislation every consideration.●

By Mr. MELCHER:

S.J. Res. 143. Joint resolution to authorize and request the President to issue a proclamation designating the calendar week beginning with Sunday, June 3, 1984, as "National Garden Week"; to the Committee on the Judiciary.

NATIONAL GARDEN WEEK

Mr. MELCHER. Mr. President, I am today introducing a joint resolution designating the week beginning June 3, 1984, as "National Garden Week."

Millions of Americans experience the joy of raising flowers and vegetables for their own enjoyment and that of their neighbors and friends. Over 1 million citizens are members of State Garden Clubs affiliated with the National Council of State Garden Clubs.

In recent years, many citizens have resumed the wartime victory garden which could be seen in vacant lots and the backyards of nearly every home in the early 1940's. The motivation this time is a war on hunger for many, as well as a healthful use of leisure time.

Our philosophers exhort us to take time from our hectic days to "stop and smell the flowers." I heartily concur. And I urge my colleagues to join me in honoring those millions of Americans who grow the flowers for our enjoyment.

I ask unanimous consent that an article from the Great Falls, Mont., Tribune on Mrs. Junne Johnsrud of Fort Benton, president of the National Council of State Garden Clubs, and the text of the joint resolution be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S.J. RES. 143

Whereas the gardeners of this country produce an abundance of food for our people and enable us to export food to other countries which are in desperate need; and

Whereas our gardeners help to preserve and foster our traditional spirit of independence and individual initiative; and

Whereas gardening instills in our people, both young and old, a greater appreciation for nature, in general, and for our beautiful land, in particular; and

Whereas such appreciation naturally leads to a greater respect and care for our environment; and

Whereas gardening, in addition to being most beneficial for our country, furnishes a pleasant, healthful and productive full- or part-time activity for a large number of our citizens; and

Whereas our gardens also yield flowers of great variety and breathtaking beauty; and

Whereas these flowers bring beauty into our lives and satisfy our esthetic needs: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation—

(1) designating the calendar week beginning with Sunday, June 3 of 1984, as "National Garden Week"; and

(2) urging Federal, State and local government agencies, as well as citizens and private organizations, to observe that week with educational efforts, ceremonies, and other appropriate activities which shall include the wearing of garden flowers as a symbol of our appreciation for the efforts and contributions of our gardeners.

[From the Great Falls (Montana) Tribune]

WOMAN'S LOVE OF FLOWERS ROOTED IN MONTANA SOIL

(By Fred Miller III)

FORT BENTON.—Some of the most remarkable people live in the most humble of towns. Take Junne Johnsrud for instance.

This sleepy Missouri River town, still clinging to vestiges of wild west frontier days, seems an unlikely place for the chairman of a national committee to spring from. Yet it is precisely the warm, closeknit spirit of Montana's most historic town that provides Johnsrud with her fortitude for achievement.

After years of winning first place ribbons in decorative flower arrangements at the Chouteau County Fair and more than 20 years of "hard work" in the Montana Federation of Garden Clubs, Johnsrud has been elected president of the National Council of State Garden Clubs.

The council sports more than one million members nationwide. Johnsrud is only the second national president in 54 years to come from the Rocky Mountain region. She travels to Louisville, Ky., May 18 for the installation service before beginning an exhaustive tour of duty which will have her speaking and demonstrating award-winning arrangement techniques to groups across the country.

"Work never scared me," she said. "I keep three sets of books and manage a set of apartments. You don't get to do anything on a national level without a lot of hard work."

"I'm going to visit 19 states before October and will be speaking at each one as the installing officer. You have to bring a different, innovative approach to each one."

Hard work is a way of life for Johnsrud. Although some of her school chums from the Hinsdale High School class of 1940 may have lost their vim and vigor with the passage of time, Johnsrud's effervescence seems fused to the steady flow of the stately Missouri which parallels her Front Street home.

Contestants in Chouteau County fairs back in the late 50s and early 60s had to compete with Johnsrud's award-winning baking and flower arrangement entries for what seemed an eternity. She would dutifully travel the 35 miles of dirt roads to Fort Benton from the ranch she and her husband, Lyle, managed.

"I'd come to town with two to three carloads on the back end of a Cadillac," she said. "It took two days before the fair to bake the cakes, pies, rolls and doughnuts. We'd bring in eggs and upholstery, anything we had time to put together."

"One year I had 54 ribbons," she said. "I received the sweepstakes award with blue ribbons for all my pies but one girl complained I was getting all the awards. Some ladies said I grew such beautiful flowers that I should join a garden club."

She did. That was 1954. By 1961 she was the president of the Montana Federation of Garden Clubs and served as director of the eight-state Rocky Mountain Region 1965-1967.

She is also certified as a Master Judge and a national instructor in flower arranging.

While not serving as president of the national gardening club, Johnsrud is equally at ease behind the grill of Fort Benton's Banque Club. She and her husband bought the old Chouteau County Bank in 1976 and have since turned it into a steak and lobster restaurant. She knows everyone on a first name basis, lending an informal and relaxed atmosphere to the dining room.

A different Montana region made a key impression on Johnsrud during her early years—the expansive high plains of Hinsdale, a small Hi-Line town west of Glasgow.

"I used to ride a little bay pacer to the top of a butte and survey the great sweeping grasslands of Montana for 75 to 100 miles in either direction." she said. "This gave one a great feeling of the land and God's design."

The preservation of water is one of the highlights of her garden club administration, with an emphasis on maintaining the quality of the environment.

"Let us keep this rugged, uncluttered setting, so enviable, for our posterity before it vanishes from this earth," she told the national garden club. "We have been planners with the best intentions and yet the biggest wasters in the world because we thought it would never end. Let's start with saving our runaway water."

From Hinsdale, she went to work for Boeing Aircraft in Seattle. Within five years she was "head girl" for a 30,000-member aeronautical union.

It wasn't long before she returned to Montana, married Lyle and went to work on the Romain ranch near Fort Benton. They had two sons, Carter and Mark, moved to town and began a restaurant business.

During that time she has managed to collect one of the state's most impressive antique collections.

She has planted roots in Fort Benton, using the historic steamboat landing as a platform from which to branch out into numerous activities and pursuits. Her accolades are impressive. She judged the World's Fair Flower Show in Seattle, and is president of a national organization with more than a million members.

But the success hasn't spoilt her humbleness—Johnsrud still feels most at home among Fort Benton's 2,000 residents, cooking steaks and waiting tables with all the propriety of a small town businessperson.

By Mr. SASSER (for himself, Mr. BAKER, Mr. BAUCUS, Mr. BENTSEN, Mr. BUMPERS, Mr. COCHRAN, Mr. DOLE, Mr. DOMENICI, Mr. HATCH, Mr. LONG, Mr. MATTINGLY, and Mr. STENNIS):

S.J. Res. 144. Joint resolution designating September 5, 1983, as "National Beale Street, Home-of-the-Blues Day" to commemorate the redevelopment of the historic area where W. C. Handy, originator of the famous music form known as the "Blues," composed the "Memphis Blues" some 70 years ago; to the Committee on the Judiciary.

NATIONAL BEALE STREET—HOME-OF-THE-BLUES DAY

● Mr. SASSER. Mr. President, today, I would like to introduce a joint resolution designating September 5, 1983, as "National Beale Street, Home-of-the-Blues Day" in order to memorialize the redevelopments and growth of this historic area.

Beale Street is located in Memphis, Tenn., and is considered to be the birthplace of the American form of music called the blues. The blues was first introduced to the public on Beale Street by a gentleman named W. C. Handy in 1907. Ever since then this type of music has grown and continues to grow in popularity in all parts of the world. With the popularity of the blues, Beale Street became a prominent and electrifying social center. It was here where unknown musicians came from all parts of the Midsouth to showcase their talent and go on to become famous blues entertainers.

Along with its popularity in the entertainment category, Beale Street was also a thriving business center in the Midsouth. It made available to many blacks and other ethnic entrepreneurs numerous business opportunities who to this day are still maintaining active businesses on this historic place.

Today, Beale Street is currently under redevelopment. This restoration campaign is an effort to bring life back into this historic area. This campaign is led by the restoration of several buildings to make room for shops, theaters, nightclubs, and other large businesses as well. Some prominent names, such as Charlie Rich, Low Rawls, and B. B. King, are considering opening businesses on Beale Street. With this inpour of different businesses coming to the Beale Street area, estimates conclude that it will produce as many as 500 new jobs.

In conclusion, Beale Street has been a major influence on the history and culture of the United States. It has given us a brand of music that is not composed of sad songs but songs of sorrow and joy, triumph and tribulation, philosophy and feeling. The blues are songs of life. Beale Street was and still is a part of all of our lives and will remain a part of the lives of future generations to come.●

By Mr. LONG (for himself, Mr. JOHNSTON, Mr. HEFLIN, Mr. THURMOND, Mr. GLENN, Mr. BRADLEY, Mr. TSONGAS, Mr. MOYNIHAN, Mr. MATTINGLY, Mr. HEINZ, Mr. BENTSEN, Mr. GORTON, Mr. HOLLINGS, Mr. INOUYE, Mr. TOWER, Mr. FORD, Mr. WARNER, Mr. LUGAR, and Mr. DURENBERGER):

S.J. Res. 145. Joint resolution to designate the week of October 2, 1983, through October 8, 1983, as "National Port Week"; to the Committee on the Judiciary.

NATIONAL PORT WEEK

Mr. LONG. Mr. President, it is my pleasure today to introduce a Senate joint resolution which authorizes the President to proclaim the week of October 2-8, 1983, as "National Port Week."

The purpose of the resolution is to give our ports the attention they rightly deserve. Throughout this Nation's great history, our seaports have established efficient and economical transfers of cargo that have made us the world's greatest trading nation. Of this trade, 98 percent is comprised of waterborne imports and exports. Through this trade, our ports provide employment for well over 1 million Americans. They stimulate a direct dollar income to the local and regional communities around which they serve.

In addition to the vital force that our ports have served in contributing to our national economic development, "National Port Week" will recognize the importance that our ports have played in serving as a focal point in our Nation's defense. In time of war or other national emergency, the ports, which represent a vital link in the national transportation system, would immediately put into effect a plan for Federal port control for efficient oper-

ation and utilization of port facilities, equipment, and services.

In setting aside a week where attention may be focused on our ports, all Americans may be proud of the important contributions that our seacoasts and inland waterways have made to the welfare and vitality of our American way of life.

The designation of "National Port Week" has a direct correlation with the 1984 World's Fair since the theme of the fair is "Water as a Source of Life." In designating "National Port Week," we will have the opportunity to highlight the economic significance of our waterway system, a system which touches the lives of all Americans. In addition, the designation of "National Port Week" will serve as a good prelude to the 1984 World's Fair.

Mr. President, I ask unanimous consent that the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 145

Whereas the past development of the public ports of the United States is the result of a fruitful partnership with the Federal Government constructing and maintaining the navigable waterways and harbors of the United States, and local municipalities assuming major responsibility for land-based port development;

Whereas the commercial seaports and inland river ports of the Nation are indispensable to foreign and domestic waterborne commerce and to the economic well-being and national security of the United States;

Whereas the maintenance and development of a national network of commercial ports is vital to expanded international trade and to the attainment of a favorable trade balance;

Whereas commercial ports serving the waterborne commerce of the United States are responsible for the continued employment of more than one million workers and in 1981 generated a total of $66,000,000,000 in direct and indirect benefits to the United States economy;

Whereas there is a continuing need to focus public attention upon the value of a viable and competitive system of commercial ports; and

Whereas a National Port Week observance promotes public recognition of the vital role that ocean and inland ports have played in the economic growth and national security of the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of October 2, 1983, through October 8, 1983 is designated as "National Port Week" and the President is authorized and requested to issue a proclamation to invite the Governors of the several States, the chief officials of local governments, and the people of the United States to observe the week with appropriate ceremonies and activities.

By Mr. HEINZ (for himself, Mr. PELL, Mr. ABDNOR, Mr. HOLLINGS, Mr. KENNEDY, Mr. MATTINGLY, Mr. DECONCINI, Mr. FORD, Mr. STENNIS, Mr. BRADLEY, Mr. HATFIELD, Mr. LONG, Mr. TOWER, Mr. GARN, Mr. TSONGAS, Mr. LAUTENBERG, Mr. BENTSEN, Mr. COHEN, Mr. GLENN, Mr. SPECTER, Mr. CHAFEE, Mr. PRESSLER, Mr. HATCH, Mr. ZORINSKY, and Mr. PERCY):

S.J. Res. 146. Joint resolution to designate March 23, 1984, as "National Energy Education Day"; to the Committee on the Judiciary.

NATIONAL ENERGY EDUCATION DAY

● Mr. HEINZ. Mr. President, as Senate chairman of the National Energy Education Day project, I am today introducing a joint resolution calling on the President of the United States to designate March 23, 1984 as "National Energy Education Day."

At a time when our country's future depends on secure and competitively priced energy resources, NEED serves to develop and enhance energy education programs at all grade levels of public and private schools.

Mr. President, in order to insure that this country meet its future energy demands, we must encourage our greatest resource—the minds and talents of this country's youth—to better understand and help find the answers to the energy questions our world faces. NEED programs have proven to be an effective vehicle in integrating energy education into the Nation's schools.

There are currently 6 million students in 10,000 school NEED programs throughout the country learning the answer to the important energy questions we face.

National Energy Education Day was initiated in March of 1980 by a joint congressional resolution and Presidential proclamation. Since that time, Congress has reiterated its support for an organized effort to help encourage young people's knowledge of the energy of the energy issues of today and tomorrow.

Mr. President, it is a privilege to serve as cochairman of the 1984 national energy education day project. The theme for NEED this year is "Energy Works for America," with special emphasis on energy and employment, and energy careers. In addition, a scientific viewpoint will be explored in relating the laws of physics and chemistry to our production and use of energy and transportation, communication, and manufacturing.

The people of this country saw what increased oil prices could do to this country's economy, as well as to their own pocketbooks, and they did something about it—they began to conserve energy. Through a concerted national effort, demand for OPEC oil declined substantially and the oil cartel is no longer able to sustain its artificially high price of oil.

However, Mr. President, it is imperative that we plan now for that day when oil is once again scarce. This means insuring adequate domestic energy resources to serve our needs. We must do all we can to develop a wide range of alternative sources of energy—from solar and wind power, to geothermal, hydro, and nuclear fusion energy. This effort will require updating our educational system at all grade levels to prepare this Nation's youth for the new demands and challenges ahead.

National Energy Education Day (NEED) will bring together students, teachers, school officials, and community members to focus attention on the need for a greater understanding of energy issues. NEED will also provide the necessary support for encouraging talented youth to choose fields of energy as viable career options.

Mr. President, with this in mind, I ask that it be resolved by the President of the United States as well as this distinguished body that March 2, 1984, hereby is designated "National Energy Education Day."●

By Mr. WEICKER (for himself, Mr. RANDOLPH, Mr. STAFFORD, Mrs. HAWKINS, Mr. NICKLES, Mr. MATSUNAGA, and Mr. KENNEDY):

S.J. Res. 147. Joint resolution to designate the week of September 25, 1983, through October 1, 1983, as "National Rehabilitation Facilities Week"; to the Committee on the Judiciary.

NATIONAL REHABILITATION FACILITIES WEEK

● Mr. WEICKER. Mr. President, today I introduce a joint resolution designating the week of September 25, 1983, as National Rehabilitation Facilities Week in honor of the more than 4,000 locally based rehabilitation facilities throughout the Nation.

These facilities, Mr. President, are the backbone of America's commitment to assist disabled citizens to lead productive lives. People of all ages with conditions ranging from birth defects to chronic diseases to traumatic injuries come to their local rehabilitation centers with the hope of gaining or regaining the abilities to care for themselves, to earn a living, and to live independently.

To be sure, we in Congress have insisted that the necessary financial support be available to support the hope of rehabilitation. The need for that support is kept before us by many national organizations such as the National Association of Rehabilitation Facilities who speak for the local rehabilitation centers. But, it is the trained professionals working in the rehabilitation facility—the vocational specialists, the physical, occupational, and speech therapist, the administrative and support staffs, together with dedicated volunteer boards of directors—who, every day, are guiding youngsters

and adults along the path from disability to independence.

These community-based rehabilitation centers have become a vital link in the health and human services continuum. They represent the best of what a public and private partnership can accomplish for our people. In recognizing their efforts via this resolution, Mr. President, we in Congress will reaffirm our commitment that the enormous potential of those with disabilities not be lost. America needs the strength of all its citizens and thanks to the constant and dedicated work from local rehabilitation facilities, disabled people are able to participate in and contribute to the growth of our society.

I urge my colleagues to support this resolution.●

By Mr. KENNEDY (for himself, Mr. HOLLINGS, Mr. DURENBERGER, Mr. GLENN, Mr. BURDICK, Mr. STENNIS, Mr. DOLE, Mr. DECONCINI, Mr. RANDOLPH, Mr. HEINZ, Mr. SASSER, Mr. MATSUNAGA, Mr. MITCHELL, Mr. SYMMS, Mr. TSONGAS, Mr. NUNN, Mr. ZORINSKY, Mr. INOUYE, and Mr. HUDDLESTON):

S.J. Res. 148. A joint resolution to designate the week of May 6, 1984, through May 13, 1984, as "National Tuberous Sclerosis Week"; to the Committee on the Judiciary.

NATIONAL TUBEROUS SCLEROSIS WEEK

Mr. KENNEDY. Mr. President, today, I am introducing on behalf of myself and Senators HOLLINGS, DURENBERGER, GLENN, BURDICK, STENNIS, DOLE, DECONCINI, RANDOLPH, HEINZ, SASSER, MATSUNAGA, MITCHELL, SYMMS, TSONGAS, NUNN, ZORINSKY, INOUYE, and HUDDLESTON, a Senate joint resolution calling for the week of May 6, 1984, through May 13, 1984, to be designated as "National Tuberous Sclerosis Week." Representative DONNELLY has introduced a comparable measure in the House of Representatives.

Tuberous sclerosis is a genetic disorder first identified in the late 1800's by Bourneville, a French physician. Despite being known for over 100 years and being one of the more common genetic disorders, this disease remains poorly understood and frequently misdiagnosed. Individuals afflicted with this disorder are born with it, but since the clinical signs may be subtle and full symptoms may take considerable time to develop, tuberous sclerosis is frequently unrecognized for many years. The disease is generally characterized by one or more of the following conditions: Convulsive seizures, mental retardation, white skin spots, tumors, physical handicaps, developmental delay, characteristic skin rash.

In any individual, these features may range from mild to extremely severe. In its severest form, tuberous sclerosis can be devastating, making the victim completely helpless and dependent. It is more common than cystic fibrosis and Duchenne's muscular dystrophy, yet the true frequency of tuberous sclerosis could be even greater since many cases are unrecognized. It is vitally important to stimulate further research of this genetic disease in order to better understand the cause of tuberous sclerosis and to develop preventative techniques.

The importance of correct diagnosis is that a mildly affected or normal parent, who may be aware of having the disease, can give birth to a severely handicapped child.

Since 1977, the Tuberous Sclerosis Association of America, found and based in Rockland, Mass., offers muchneeded support and assistance to victims of tuberous sclerosis and their families across the country. This organization receives no Federal funds and is run by parents and volunteers. Along with this family support, the goals of this national organization include: Public and physician education and awareness, case finding, earliest identification, and genetic counseling.

I am proud to introduce this legislaton declaring a National Tuberous Sclerosis Week on behalf of the countless Americans across our Nation who suffer from this disease, their families, and their friends. It is my hope that this week will stimulate continued and extensive research of tuberous sclerosis, increase public awareness of this genetic disorder, and in the near future, bring about the discovery of the cause and a cure for this devastating disease. I urge my colleagues in the Senate to act promptly on this important legislation.

By Mr. HUDDLESTON (for himself, Mr. COCHRAN, Mr. MELCHER, Mr. BOSCHWITZ, Mr. LEAHY, Mr. EAGLETON, and Mr. HEFLIN):

S.J. Res. 149. Joint resolution to temporarily suspend the authority of the Secretary of Agriculture under the milk price support program, to impose a second 50 cents per hundredweight deduction from the proceeds of the sale of all milk marketed commercially in the United States; to the Committee of Agriculture, Nutrition, and Forestry.

MILK PRICE SUPPORT PROGRAM

● Mr. HUDDLESTON. Mr. President, I am today introducing legislation to suspend the authority of the Secretary of Agriculture to collect the second 50-cent fee on milk marketed, as authorized by the Omnibus Budget Reconciliation Act of 1982, until November 1, 1983.

Many of my colleagues and I have worked to achieve a compromise on dairy legislation that would reduce the amount of surplus production, lower the cost of the milk price support program, and provide some stimulus to consumption by lowering the support price. Unfortunately, the compromise may not come to a vote before the Secretary imposes the second of two 50-cent fees authorized by the 1982 Omnibus Budget Reconciliation Act. In fact, yesterday the Secretary announced that he would begin to collect the second fee effective September 1. This action would increase the deduction from the proceeds of sale of all milk sold commercially to a total of $1 per hundredweight.

The Secretary's action to increase the deduction will require the Department of Agriculture to establish a refund program for milk producers who reduce commercial milk marketings. To qualify for refunds of the second 50-cent fee, producers must reduce commercial milk marketings for the period September 1, 1983, through September 30, 1984, by 8.4 percent from the average of the 2 marketing years that began October 1, 1980.

Mr. President, it would be unfortunate and costly if the Secretary were to proceed with his plan to collect the second 50 cent fee and Congress then repealed the authority for the fees, as would be the case if the pending dairy legislation—contained in S. 1529—were rapidly enacted after the August recess.

The legislation I am introducing today would delay the Secretary's action until Congress has time to consider and vote on the dairy compromise bill.

Mr. President, I ask unanimous consent that the text of the resolution I am introducing and the announcement by Secretary of Agriculture Block be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S.J. RES. 149

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, prior to November 1, 1983, the Secretary of Agriculture may not implement, under the provisions of section 201(d)(3) of the Agricultural Act of 1949, a second deduction of 50 cents per hundredweight from the proceeds of sale of all milk marketed commercially by producers.

USDA INCREASES MILK DEDUCTION 50 CENTS

WASHINGTON, Aug. 3—Secretary of Agriculture John R. Block today announced the U.S. Department of Agriculture will increase the deduction from proceeds of sale of all milk sold commercially Sept. 1, 1983 through Sept. 30, 1984 by 50 cents to a total of $1 per hundredweight. Deductions will be remitted to USDA's Commodity Credit Corporation to help offset the cost of the milk support program, he said.

Producers who reduce their commercial milk marketings for Sept. 1, 1983 through Sept. 30, 1984 (the last month of the 1982-83 marketing year and the whole 1983-84 marketing year) by 8.4 percent from the average of the two marketing years that began

Oct. 1, 1980 will receive refunds of the second 50 cent deduction.

Block also announced that the price support level for manufacturing grade milk (3.67 percent average fat content) will continue at $13.10 per hundredweight for the marketing year beginning Oct. 1, the minimum level of support authorized by law.

Both the deductions and the minimum support price level are authorized by last year's amendment to the Agriculture act of 1949. These actions have been taken to reduce milk production and to reduce costs of the dairy price support program, according to Block.

CCC is authorized to deduct 50 cents if the government expects to purchase annually in excess of 5 billion pounds (milk equivalent) of dairy products. an additional 50-cent deduction is authorized if government dairy purchases annually are expected to exceed 7.5 billion pounds and there is a refund program in place. CCC expects to purchase more than 16 billion pounds of dairy products in the year ending Sept. 30 and more than 11 billion pounds during the 1983-84 marketing year.●

ADDITIONAL COSPONSORS

S. 454

At the request of Mr. BYRD, the name of the Senator from Idaho (Mr. SYMMS) was added as a cosponsor of S. 454, a bill to provide for an accelerated study of the causes and effects of acidic deposition during a 5-year period, and to provide for grants for mitigation at sites where there are harmful effects on ecosystems resulting from high acidity.

S. 616

At the request of Mr. DURENBERGER, the name of the Senator from Oklahoma (Mr. BOREN) was added as a cosponsor of S. 616, a bill to promote the use of solar and other renewable forms of energy developed by the private sector.

S. 619

At the request of Mr. TSONGAS, the names of the Senator from California (Mr. CRANSTON) and the Senator from Ohio (Mr. GLENN) were added as cosponsors of S. 619, a bill to reauthorize, extend, and enhance existing Federal programs to encourage conservation and the use of renewable energy by this Nation's consumers.

S. 877

At the request of Mr. HOLLINGS, the name of the Senator from California (Mr. CRANSTON) was added as a cosponsor of S. 877, a bill to require the National Weather Service to report routinely on the levels of acid content found in precipitation and dry deposition throughout the United States, and for other purposes.

S. 948

At the request of Mr. THURMOND, the name of the Seantor from Utah (Mr. HATCH) was added as a cosponsor of S. 948, a bill to reform Federal criminal and civil forefeiture.

S. 1051

At the request of Mr. TOWER, the name of the Senator from Nebraska (Mr. EXON) was added as a cosponsor of S. 1051, a bill to amend the Internal Revenue Code of 1954 to allow certain prepayments of principal and interest to be treated as contributions to an individual retirement account, to allow amounts to be withdrawn from such account to purchase a principal residence, and for other purposes.

S. 1146

At the request of Mr. BENTSEN, the names of the Senator from Florida (Mr. CHILES) and the Senator from Virginia (Mr. TRIBLE) were added as cosponsors of S. 1146, a bill to amend the Federal Aviation Act of 1958 to provide for the revocation of the airman certificates and for additional penalties for the transportation by aircraft of controlled substances, and for other purposes.

S. 1361

At the request of Mr. HUMPHREY, the name of the Senator from Florida (Mrs. HAWKINS) was added as a cosponsor of S. 1361, a bill to require notice on social security checks that it is a violation of law to commit forgery in conjunction with the cashing of those checks.

S. 1435

At the request of Mr. WALLOP, the name of the Senator from Georgia (Mr. NUNN) was added as a cosponsor of S. 1435, a bill to amend the Internal Revenue Code of 1954 to allow a deduction for contributions to housing opportunity mortgage equity accounts.

S. 1475

At the request of Mr. WALLOP, the name of the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 1475, a bill to amend the Internal Revenue Code of 1954 to repeal the highway use tax on heavy trucks and to increase the tax on diesel fuel used in the United States.

S. 1496

At the request of Mr. TSONGAS, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1496, a bill to amend the Internal Revenue Code of 1954 to encourage investment in new business ventures.

S. 1512

At the request of Mr. DURENBERGER, the name of the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 1512, a bill to retain the current duty on corned beef.

S. 1621

At the request of Mr. HUMPHREY, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 1621, a bill to amend the Federal Aviation Act of 1953 to require commercial passenger carrying aircraft to be equipped with smoke detectors and automatic fire extinguisher in all aircraft lavatories and galley areas.

S. 1623

At the request of Mr. DOLE, the name of the Senator from Minnesota (Mr. DURENBERGER) was added as a cosponsors of S. 1623, a bill to establish a National Commission on Neurofibromatosis.

S. 1626

At the request of Mr. SASSER, the name of the Senator from North Dakota (Mr. BURDICK) was added as a cosponsor of S. 1626, a bill relating to universal telephone service.

S. 1630

At the request of Mr. TOWER, the names of the Senator from New Mexico (Mr. DOMENICI), the Senator from Florida (Mrs. HAWKINS), and the Senator from Texas (Mr. BENTSEN) were added as cosponsors of S. 1630, a bill to provide general assistance to local educational agencies for the provision of education services to alien children, and for other purposes.

S. 1687

At the request of Mr. BENTSEN, his name was added as a cosponsor of S. 1687, a bill to amend the Agricultural Act of 1949 to require the Secretary of Agriculture to make an earlier announcement than is required under current law of any acreage limitation or set-aside program established for the 1984 or 1985 crop of feed grains or the 1985 crop of wheat.

SENATE JOINT RESOLUTION 93

At the request of Mr. EAST, the names of the Senator from Florida (Mrs. HAWKINS), the Senator from Kansas (Mr. DOLE), the Senator from Idaho (Mr. SYMMS), the Senator from Tennessee (Mr. BAKER), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Iowa (Mr. GRASSLEY), the Senator from Kentucky (Mr. HUDDLESTON), and the Senator from Louisiana (Mr. LONG) were added as cosponsors of Senate Joint Resolution 93, a joint resolution to designate the month of September each year as "National Sewing Month."

SENATE JOINT RESOLUTION 110

At the request of Mr. STEVENS, the name of the Senator from Louisiana (Mr. JOHNSTON) was added as a cosponsor of Senate Joint Resolution 110, a joint resolution proposing an amendment to the Constitution of the United States with respect to limiting campaign contributions and expenditures.

SENATE JOINT RESOLUTION 131

At the request of Mr. DOLE, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of Senate Joint Resolutions 131, a joint resolution designating "National Cystic Fibrosis Week."

SENATE JOINT RESOLUTION 136

At the request of Mr. BIDEN, his name was added as a cosponsor of Senate Joint Resolution 136, a joint resolution to recognize "Volunteer

Firefighters Recognition Day," as a tribute to the bravery and self-sacrifice of our volunteer firefighters.

At the request of Mr. GLENN, the names of the Senator from New Jersey (Mr. BRADLEY) and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of Senate Joint Resolution 136, supra.

At the request of Mr. BYRD, his name was added as a cosponsor of Senate Joint Resolution 136, supra.

SENATE CONCURRENT RESOLUTION 21

At the request of Mr. COHEN, the names of the Senator from Kentucky (Mr. HUDDLESTON) and the Senator from Hawaii (Mr. MATSUNAGA) were added as cosponsors of Senate Concurrent Resolution 21, a concurrent resolution expressing the sense of the Congress respecting the administration of title X of the Public Health Service Act.

SENATE RESOLUTION 126

At the request of Mr. WALLOP, the name of the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of Senate Resolution 126, a resolution to express the sense of the Senate that the changes in the Federal estate tax laws made by the Economic Recovery Tax Act of 1981 should not be modified.

SENATE RESOLUTION 149

At the request of Mr. DODD, the name of the Senator from Oregon (Mr. PACKWOOD) was added as a cosponsor of Senate Resolution 149, a resolution to express the sense of the Senate that the laws which insure equal rights with regard to education opportunity for women should be maintained.

SENATE RESOLUTION 182

At the request of Mr. DOLE, the name of the Senator from Maine (Mr. COHEN) was added as a cosponsor of Senate Resolution 182, a resolution expressing the sense of the Senate with respect to travel by Members of the Senate to the Soviet Union.

SENATE RESOLUTION 191

At the request of Mr. LEAHY, the names of the Senator from Texas (Mr. BENTSEN), the Senator from New Jersey (Mr. BRADLEY), the Senator from North Dakota (Mr. BURDICK), the Senator from Illinois (Mr. DIXON), the Senator from Ohio (Mr. GLENN), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Montana (Mr. MELCHER), the Senator from Ohio (Mr. METZENBAUM), the Senator from New York (Mr. MOYNIHAN), the Senator from Wisconsin (Mr. PROXMIRE), the Senator from Michigan (Mr. RIEGLE), the Senator from Nebraska (Mr. ZORINSKY), the Senator from New Hampshire (Mr. RUDMAN) were added as cosponsors of Senate Resolution 191, a resolution relating to justice in the case of the slain American churchwomen in El Salvador.

SENATE CONCURRENT RESOLUTION 60—RELATING TO THE DEPARTMENT OF EDUCATION

Mr. DODD (for himself, Mr. HOLLINGS, Mr. PELL, Mr. BENTSEN, Mr. MATHIAS, Mr. KENNEDY, Mr. MELCHER, Mr. CHILES, Mr. TSONGAS, Mr. LAUTENBERG, Mr. BUMPERS, Mr. EAGLETON, Mr. INOUYE, Mr. BINGAMAN, Mr. BIDEN, Mr. SARBANES, Mr. LEVIN, Mr. DIXON, Mr. BRADLEY, Mr. BURDICK, Mr. RANDOLPH, and Mr. WEICKER) submitted the following concurrent resolution, which was referred to the Committee on Governmental Affairs:

S. CON. RES. 60

Whereas education is an essential attribute of our democratic society;

Whereas all students should have access to a quality education regardless of race, national origin, sex, economic background or handicapped conditions;

Whereas Congress is committed to furnishing adequate financial and personnel resources to assure access to education;

Whereas the Congress has established programs of eductional assistance to enhance the ability of important segments of the population of this country to reach full educational potential, including programs for native Americans, children of migrant workers, and disadvantaged children, as well as programs to assure equality of educational opportunity for women and minorities;

Whereas the programs have a proven record of effectiveness in helping to provide these citizens with realistic opportunities to achieve educational excellence; and

Whereas current proposals of the Department of Education to reorganize and consolidate programs and to make severe reductions in the personnel necessary to carry out program mandates threaten to undermine efficient operation and future effectiveness of such programs: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that the current organizational integrity and personnel strength for programs in elementary, secondary, adult and vocational education in the Department of Education should be retained.

SEC. 2. The Senate urges the Secretary of Education to postpone further action on the reorganization described in the preamble of this resolution until a study by the General Accounting Office determines that such reorganization would not reduce the ability of the Department of Education to achieve the goals intended by Congress when it authorized the affected programs.

SEC. 3. The Secretary of the Senate is directed to transmit a copy of this resolution to the Secretary of Education.

Mr. DODD. Mr. President, I am introducing today, with the distinguished Senator from South Carolina, Mr. HOLLINGS and others, a concurrent resolution expressing the Senate's opposition to reorganization plans announced by the Department of Education and urging that further action be postponed unless a study by the General Accounting Office determines that the plans can be implemented without doing damage to the programs affected by the reorganization.

We are joined in this effort by Senators PELL, BENTSEN, MATHIAS, KENNEDY, MELCHER, CHILES, TSONGAS, LAUTENBERG, BUMPERS, EAGLETON, INOUYE, BINGAMAN, BIDEN, SARBANES, LEVIN, DIXON, BRADLEY, BURDICK, RANDOLPH, and WEICKER.

Similar legislation is being introduced by Representative GEORGE MILLER of California in the other body. Senator HOLLINGS, Representative MILLER and I have written to the Comptroller General requesting an investigation of the reorganization. I ask unanimous consent that a copy of the letter be printed at the end of my remarks.

The reorganization at issue would involve severe reductions in personnel and consolidations of programs in the Office of Elementary and Secondary Education, the Office of Vocational and Adult Education and the Secretary's regional representative's offices. It would affect the compensatory education programs of chapter I, the 28 categorical programs consolidated into chapter II block grants, migrant education, the Women's Educational Equity Act, title IV of the Civil Rights Act and Indian Education, among others.

As many as 300 individual positions, many of them for valuable professionals, would be eliminated. That RIF would come on the heels of staff reductions numbering 1,900 since the current administration took office and in the face of a report by a task force of the President's own private sector survey that morale throughout the Department is very low. The reorganization affects programs that have both records of achievement and proven popularity with the groups they serve. The personnel reductions are urged at a time when demand for services in vocational education have never been higher and when, it can be safely predicted, the Department will soon be asked to administer new initiatives in mathematics and science education.

In short, this plan is neither good sense nor sound public policy.

The official rationale of the Department and the administration is that the reorganization is intended to enhance the efficient administration of the programs. Far from conceding that any downgrading is intended, their spokesmen tell us the moves will make the programs work even better.

There is an old saying in American politics, Mr. President, that goes back to frontier days. "If you want to know what a man really has in mind," it advises, "don't listen to his words, watch his feet."

In this particular case, that is very sage counsel.

The lights have burned late at the White House speechwriting offices in recent months. The President does not miss many opportunities to speak about his commitment to education, or the pride he takes in the civil rights

record of his administration, or how he just cannot understand the basis for the gender gap.

But behind that rhetorical smokescreen are opposition to the ERA, cutbacks in education funding, and a promise to abolish the Department of Education, and a vain attempt to obstruct reauthorization of the Voting Rights Act.

The pattern of the latest fancy footwork is easily seen in this reorganization effort. If funding cutbacks, program consolidation and abolitions, and personnel reductions can work such managerial magic, why have they not been suggested for the Department of Defense? If the most efficient way to administer programs within a functional area is not to locate them in a single department, why have we not heard a proposal to disperse the Pentagon's portfolio across the bureaucratic landscape?

If there is a sincere concern about the special needs of minority communities and populations, why does Congress have to battle each year to prevent reductions in chapter I moneys and why are we now told that we simply do not need many people to oversee programs for migrant children and Indian children?

If civil rights is a priority, why are half the staff currently assigned to implement title IV of the Civil Rights Act being eliminated?

There has been at least one revealing break in the administration's impassive defense of the reorganization. Yesterday, the House Subcommittee on Elementary, Secondary and Vocational Education conducted a hearing on the matter. Representative PATRICIA SCHROEDER of Colorado expressed concern about the reduced status envisioned for the Women's Educational Equity Act. She asked the Department's Deputy Under Secretary for Management, Charles Heatherly, if he had earlier, as a private citizen, edited a book which referred to the program as a case of the "The Feminist Network Feeding at the Federal Trough?" He had. How did he feel, she wondered, now that he had the experience of observing the program first-hand. He felt the same, he said, only more strongly.

Now, Mr. President, those may be the words of a manager dedicated to making a program work even more effectively. But for some reason I do not think so.

In general, Mr. President, I believe in giving the managers of an agency considerable discretion in the way they choose to carry out their responsibilities. But in this instance, we are dealing with matters on which Congress and the administration clearly are in strong disagreement over both substance and priorities. I must say, with all respect, that it raises the very real question of whether there is underway an attempt to accomplish administratively what Congress has refused to do legislatively.

That is the reason for this resolution, Mr. President. It suggests a reasonable and responsible course of action. It simply asks that the reorganization not be undertaken until an independent, professional evaluation is completed by the General Accounting Office. That study would provide an objective, third-party assessment of whether the reorganization would truly improve the delivery of program services as the administration contends, or if it would undermine their effectiveness, as Senator HOLLINGS and I and many of our colleagues fear.

By adopting the resolution, the Senate would reaffirm its commitment to the importance of a quality education to a free citizenry and its determination that race, sex, ethnic background, or economic circumstances not undermine any American's opportunity to achieve education excellence. It would also reaffirm our intention that the programs we have mandated to accomplish those goals receive sufficient personnel, financial, and administrative resources to make them truly effective.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., July 29, 1983.

Hon. CHARLES A. BOWSHER,
Comptroller General of the United States, General Accounting Office Building, Washington, D.C.

DEAR MR. BOWSHER: We would like to request a General Accounting Office study of the proposed reorganization and reduction-in-force within the Department of Education. In particular, we are interested in verifying whether or not the proposed reorganization and reduction-in-force by the Department of Education of its Offices of Elementary and Secondary Education, Vocational and Adult Education, and Regional Offices will affect the Department's ability to effectively manage existing programs and new programs that are now before Congress and whether or not it will affect the Department's ability to assure equality of educational opportunity for those served by these programs.

The study should focus on the affected programs within the Office of Elementary and Secondary Education including Chapter I, Chapter II, Migrant Education, Indian Education, Title IV of the Civil Rights Act, and Women's Educational Equity Act, as well as those within the Office of Vocational and Adult Education, and the role of the Regional Offices in successfully implementing these many programs.

This is the second major reorganization within the Department of Education in 18 months. We advocate the efficient management of Federal programs. At the same time, we are concerned that this reorganization will greatly impair the delivery capability of the offices involved and will undermine the credibility of the Department. To assist our deliberations, we request that GAO interview a cross-section of Education Program Specialists, program managers at both the Department headquarters and regional offices level, state offices of education, and national education associations concerned with implementation of these programs in order to determine the impact of the Department's proposed personnel changes.

Due to the fact the proposed reorganization and reduction-in-force is scheduled to take place September 15, 1983, we would request that this evaluation be completed by September 5, 1983. Thank you for your cooperation on this study. If you have questions, please contact Dorothy Seder (Senator Hollings' staff) at 224-6121.

Sincerely,

ERNEST F. HOLLINGS.
GEORGE E. MILLER.
CHRISTOPHER J. DODD.

Mr. HOLLINGS. Mr. President, I am pleased to join today with my distinguished colleague from Connecticut, Senator DODD, in offering a sense-of-the-Senate resolution urging the Secretary of Education to postpone further action on the reorganization of several programs within the Department of Education until a study by the General Accounting Office determines that this proposed reorganization will not reduce the ability of the Department to achieve the goals intended by Congress when it authorized the affected programs.

The Secretary of Education has proposed a reduction in force of over 300 positions within the Department of Education effective September 15, 1983. The proposed reduction in staff and reorganization of programs would take place in the Office of Elementary and Secondary Education, Vocational and Adult Education, and the Secretary's regional representatives offices.

Of significant concern are the specific programs within the Office of Elementary and Secondary Education slated for staff reductions. Title I, which provides compensatory education for the disadvantaged; chapter II block grant, which consists of 28 consolidated categorical programs; migrant education; Indian education; title IV of the Civil Rights Act; and the Women's Educational Equity Act would be reorganized and the staff assisting these programs would be substantially reduced. These programs, Mr. President, serve special populations with specific needs and a RIF of this kind will very likely result in the Department's inability to meet its mandate of providing high quality education to all Americans.

The Department claims this reorganization and reduction in staff will enhance its ability to carry out congressional directives. I hold a different view. I see it more as an attempt to dismantle the Department of Education internally since the Congress has shown no interest in doing so legislatively. It should be noted that this is the second reorganization and reduction in force within the Department in just 18 months. In fact, since January 1981, the Department of Education

has lost 1,900 employees, over 25 percent of its staff. But, for the Office of Elementary and Secondary Education, the reduction in personnel is close to 50 percent.

While I am a strong advocate of the efficient management of Federal programs, I am concerned that further reorganization and reduction in staff will greatly impair the delivery capability of the offices involved and will seriously undermine the credibility of the Department.

TITLE I

Under the proposed reorganization plan, the vanguard in Federal efforts to assist minorities and the poor will experience a reduction in force for the second time in 18 months. This action comes at a time when the National Assessment of Education Progress again has given the title I program glowing marks for upgrading math and reading achievement scores of disadvantaged students. And the prestigious Stanford Research Institute has reported that, "Federal programs aimed at the disadvantaged, handicapped, and non-English-speaking students have made a deeper and more positive impression on schools. * * * Federal actions can indeed make a substantial difference in local educational practices * * *." Even Secretary Bell has publicly stated that title I is a "good program" and that "the effectiveness of it is well documented."

For the past several years, this administration has consistently sought to cut title I spending. Congress has wisely rejected this effort every time. In fact, Mr. President, Congress has added money each year. In May, the Senate added $1 billion for education to its budget resolution, a significant amount of this assumed for the title I program.

Mr. President, the title I program has been the major effort in the history of this Nation to finally provide equal educational opportunities for the economically disadvantaged and the educationally deprived. The Department of Education's proposed reorganization and reduction in the experienced Elementary and Secondary Education personnel—those who have made it work so well—threatens the progress we have made in this area of education.

WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM

Those of us familiar with the high level of discrimination against women in this society even blanche at some of the recent statistics on the resilience of that discrimination. There is no doubt that we have made great strides in raising the awareness of the problem, but little progress has been made in diminishing it. In fact, during recent national competition for the severely limited WEEA discretionary moneys—$5.7 million—approximately 700 proposals were submitted from across the Nation, collectively detailing the necessity of continuing our efforts to attain educational equity for women. In light of such a monumental challenge, the administration is proposing cutbacks and the downgrading of WEEA staff, dramatically lowering the status of this important Federal program.

INDIAN EDUCATION

No matter how negative statistics appear outlining the quality of our Nation's educational system, those figures are exemplary when compared to data representing the educational situation of Native Americans. By almost any criteria or comparison they fall at the bottom of the scale. Over 200 years of severe discrimination and neglect has taken a devastating toll on the first Americans. Fortunately, the awareness level of the Nation toward the problem is at an all time high.

Yet the proposed RIF in the Office of Elementary and Secondary Education will further reduce the status and size of a division that was formed to take the lead in attacking these serious inequities. Such action will not only impair the ability of the unit to effectively deal with this highly critical national need, but will send a clear signal to Native Americans that this administration does not care about them. When a problem is recognized, a solution proposed and public opinion directed toward a successful resolution of that problem, it is not the time to pull back. That is what this RIF will do. We should reject this effort, Mr. President.

MIGRANT EDUCATION

In addition to experiencing a 28-percent reduction in staff, migrant education would be consolidated with the title I program, violating Congress clear intent that the program have complete autonomy and direct access to the Assistant Secretary of Elementary and Secondary Education. It is essential to the program's success that migrant education have a national focus in State funding. Such access and mobility allows school districts to communicate on a migrant child's special needs and promotes the continuity of learning. It is imperative that this reorganization be denied and the program permitted to maintain its independent integrity.

TITLE IV OF CIVIL RIGHTS ACT OF 1964

The proposed reorganization calls for reduction of one-half the staff responsible for implementing programs which insure educational equity based on race, sex, and national origin. Recent enforcement problems around the country, including Chicago, St. Louis, and Alabama, point out the type of discrimination problems which exist and require national attention. To reduce the staff qualified to assist and help enforce the laws designed to eliminate this discrimination is simply unwarranted. Perhaps this administration would not have its problem, real or perceived, with civil rights if it maintained its capable staff skilled in dealing with such important matters.

NEW EDUCATION INITIATIVES

The Department's plan to reduce the staff and reorganize programs within the the Office of Elementary and Secondary Education, the regional offices, and the Office of Vocational and Adult Education is not only a serious attack on a successful support structure, it is being conducted at a time when new legislative initiatives are forthcoming to help meet the growing demand for quality education.

Several hundred million dollars will be authorized and appropriated this coming fiscal year by Congress to support programs for reducing the math/science teacher shortage and for raising the quality of math and science education. Additional proposals are sure to follow. And, hearings are now being held on the subject of merit pay and increased salaries for teachers. Yet, who will be responsible for implementing these new initiatives?

Key parts of any new legislation in these areas will become the responsibility of the offices within the Department of Education. A rapid and effective response will be needed from the Department if pending legislation is to have a maximum impact. Experienced staff will be at a premium if we obtain the results we expect. Regrettably, the impending RIF does not account for these needs and is sure to displace many of the personnel who are key to the effective and rapid implementation of legislation aimed at improving the quality of education in America.

VOCATIONAL AND ADULT EDUCATION

As proposed by the Department of Education, the Office of Vocational and Adult Education would be reduced for the second time in 18 months. The Department claims reduced workloads justify a reduction in staff in this area. However, enrollments in vocational education alone have increased by more than 85 percent in the last 10 years, with current enrollment at an all-time high.

With the unprecedented long-term unemployment and the needs of specialized skills in the emerging high-tech industries we cannot afford to weaken this network. Furthermore, adult education programs are experiencing similar increased demands placed on them rather than reduced workloads. In fact, more than 2.1 million adults enroll annually in these programs but the potential target population of adults who have not finished high school or its equivalency is in excess of 53 million, and the number of adults who lack the basic skill to cope with the everyday demands of this technological society is more than 20 million.

The administration proposed the consolidation of adult and vocational education programs but Congress denied this request. There has been no legislative mandate necessitating the reduction of personnel in this important office. The world of work is changing rapidly and it is absolutely critical that people be prepared with skills that will enable them to compete and succeed in the job market. I am fearful the proposed RIF will impair the Department's ability to properly perform their duties in these vital areas of education.

REGIONAL OFFICES

The Department of Education's reorganization plan calls for a 50-percent reduction in staff at all 10 of the Secretary's regional representative offices. These offices provide technical assistance, dissemination of information, and coordination of activities between State and local education agencies and the headquarters here in Washington.

In light of the significant consolidation mandated in recent years, these offices are essential, Mr. President, if we are to have the proper implementation of these education programs. I am greatly concerned that this 50 percent reduction will seriously impair a State or local education agency's ability to perform its important task. Now, more than ever, Federal, State, and local cooperation is necessary in order to stretch limited resources. This RIF proposal flies in the face of effectiveness.

In conclusion, Mr. President, almost daily we hear President Reagan telling this important group or that distinguished gathering that we must do what is necessary to raise the quality of education for every American. A notable goal, Mr. President. However, at the same time President Reagan is speaking, his appointees at the Department of Education are demoralizing and effectively destroying the ability of its experts in the Offices of Elementary and Secondary Education, Vocational and Adult Education, and the Secretary's regional representatives offices to respond to the important challenge he outlines.

He cannot have it both ways. If he truly wants to confront the problems facing education in our Nation, he will have to have some troops to fight the battles. And these troops will have to be led and inspired to make the fight and obtain the results are seek. President Reagan seeks the right goal—quality education—but he does nothing to prepare his Department of Education to achieve that end.

This reorganization and reduction in staff will substantially reduce the educators within the ranks of the Department. The capacity of the body of expertise who know the programs and have effectively and professionally carried out their duties as mandated by Congress is being systematically eliminated. Certainly this pell mell rush to RIF and dispirit this high quality group can only lower the quality of education rather than enhance it. Expertise is essential in any professional organization. It is critical for those responsible for assisting the State and local education agencies in providing the highest quality of education possible.

My suggestion, Mr. President, is that we have a better idea of what we can expect to gain from this proposal before we allow it to proceed. This administration has consistently showed it knows the cost of everything and the value of nothing. Our education programs are too important, too necessary, to relinquish to such an unproven and misdirected proposal.

● Mr. BRADLEY. Mr. President, I rise in support of the resolution urging the Secretary of Education to postpone further action on reorganizing the Department of Education until a study is conducted by the General Accounting Office to determine whether the reorganization would reduce the ability of the Department of Education to achieve its goals.

Next month the Secretary of Education has scheduled a major reorganization and reduction in staffing at the Department of Education. A number of Federal education programs could be affected by these proposals, including programs that are aimed at meeting the special needs of women, migrants, and disabled and disadvantaged children. It is my understanding that major cutbacks may be made here in Washington and in several of the Federal regional offices.

Mr. President, this reorganization could have a devastating impact on essential education programs of proven effectiveness. The cutback could impair the Federal Government's commitment to equality of educational opportunity for all its citizens. I believe that we need to insure that the rights of our citizens are protected before the reorganization effort is undertaken.

It is not fully clear to me why this reorganization is being pushed, especially since the Department of Education has already undergone extensive reorganizations and cutbacks in 1981 and 1982. I am concerned that the reorganization may be an attempt on the part of some officials to impose their own agenda on these vital education programs, contrary to the wishes of Congress.

Mr. President, to insure that the rights of our citizens are protected, we are urging the Secretary of Education to postpone the reorganization until the GAO determines that the reorganization would not reduce the ability of the Department of Education to achieve the goals intended by Congress. I urge my colleagues to join us in this effort.●

SENATE RESOLUTION 193—ORIGINAL RESOLUTION REPORTED WAIVING CONGRESSIONAL BUDGET ACT

Mr. DURENBERGER, from the Committee on Governmental Affairs, reported the following original resolution; which was referred to the Committee on the Budget:

S. RES. 193

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 1090. Such waiver is necessary because S. 1090 authorizes the enactment of new budget authority which would first become available in fiscal year 1984, and such bill was not reported on or before May 15, 1981, as required by section 402(a) of the Congressional Budget Act of 1974 for such authorizations.

The waiver of section 402(a) is necessary to permit congressional consideration of statutory authority to create a study commission on the subject of outdoor recreational resources.

S. 1090 provides an authorization for fiscal year 1984 of $1,500,000. No funds have previously been authorized or appropriated for this purpose.

SENATE RESOLUTION 194—ORIGINAL RESOLUTION REPORTED WAIVING CONGRESSIONAL BUDGET ACT

Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs, reported the following original resolution; which was referred to the Committee on the Budget:

S. RES. 194

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 1729, to strike medals for the widow of Roy Wilkins, the Louisiana World Exposition, the families of American personnel missing in Southeast Asia, and Danny Thomas. Such waiver is necessary to permit consideration of an additional fiscal year 1984 authorization of appropriations for the Department of Treasury to carry out the purposes of S. 1729.

Such waiver is necessary because S. 1729 was not reported by May 15, 1983, as required by section 402(a) of the Congressional Budget Act of 1974.

AMENDMENTS SUBMITTED

DEPARTMENT OF THE INTERIOR APPROPRIATIONS, 1984

McCLURE AMENDMENT NO. 2110

Mr. McCLURE proposed an amendment to the bill (H.R. 3363) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1984, and for other purposes, as follows:

On page 81, line 14, before the period insert the following:

"*Provided*, That all of the restrictions and limitations set forth in 16 U.S.C. 839(j)(1), shall apply to any contracts or obligations entered into by the Administrator pursuant to this provision"

EXON AMENDMENT NO. 2111

Mr. EXON proposed an amendment to the bill, H.R. 3363, supra, as follows:

At the appropriate place in the bill insert the following:

That notwithstanding any other provision of law, the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is hereby authorized to convey to Mitchell School District in Scotts Bluff County, Nebraska, all right, title, and interest, except as provided herein, to a tract of land consisting of 20 acres, more or less, more particularly described as the west half southwest quarter northwest quarter section 17, township 23 north, range 55 west, sixth principal meridian. Conveyance of such right, title, and interest shall be upon the condition that the Mitchell School District shall simultaneously convey without cost, an easement right on certain of the above-described lands to the Pathfinder Irrigation District for the purpose of operating and maintaining irrigation canals, laterals, or drains-related storage works of the North Platte project, a Federal reclamation project. The Mitchell School District shall pay the fair market value of the lands as of the date of the conveyance, including administrative costs, as determined by the Secretary. In determining the fair market value of the lands, the Secretary shall recognize the existence of the easement right to be granted to the Pathfinder Irrigation District and shall not include the value of any improvements made on or to the lands by the Mitchell School District or its predecessors. Withdrawals from the public domain as they pertain only to the lands described in the first section under Secretarial Orders of February 11, 1903, and July 24, 1917, for purposes of the North Platte Project, are revoked by conveyance of the rights, title, and interests as set forth in the first section and section 2.

DEPARTMENT OF TRANSPORTATION APPROPRIATIONS, 1984—CONFERENCE REPORT

MATHIAS AMENDMENT NO. 2112

Mr. MATHIAS (for himself, Mr. DOMENICI, Mr. TRIBLE, Mr. WARNER, Mr. SARBANES, Mr. SASSER, Mr. BINGAMAN, Mr. EAGLETON, Mr. BURDICK, Mr. GLENN, and Mr. RANDOLPH) proposed an amendment to the amendment of the House to an amendment of the Senate accompanying the Conference Report on a bill (H.R. 3329) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1984, and for other purposes, as follows:

At the end of the matter proposed to be inserted by the amendment of the House of Representatives, add the following:

SEC. 323. None of the funds appropriated by this Act or any other Act may be obligated or expended before October 15, 1983—

(1) to adopt, to issue, or to carry out a final rule or regulation, a final revision, addition, or amendment to regulations, or a final statement of policy based on any proposed rule or regulation, any proposed revision, addition, or amendment to regulations, or any proposed statement of policy of which a notice was published in parts III-VI of the Federal Register on March 30, 1983 (48 F.R. 13,342 to 13,381) or in parts III through VI of the Federal Register on July 14, 1983 (48 F.R. 32,275 to 32,312); or

(2) to adopt, to issue, or to carry out any final rule or regulation, any final revision, addition, or amendment to a regulation, or any final statement of policy which effectuates the purposes of any proposed rule, regulation, revision, addition, amendment, or statement of policy referred to in clause (1).

JULIETTE GORDON LOW FEDERAL BUILDING

MATTINGLY AND STAFFORD AMENDMENT NO. 2113

Mr. BAKER (for Mr. MATTINGLY and Mr. STAFFORD) proposed an amendment to the bill (S. 505) to designate the Federal building to be constructed in Savannah, Ga., as the "Juliette Gordon Low Federal Building"; as follows:

After line 9, add a new section as follows:

"SEC. 2. (a) The Administrator of General Services (hereinafter referred to as the Administrator), may accept and use contributions from private individuals or organizations for the design and construction of a memorial commemorating the life and accomplishments of Juliette Gordon Low. The Administrator, in consultation with the chairman of the National Endowment for the Arts and the national President of the Girl Scouts of America, shall determine the appropriate form and location of such memorial, to be located in or around the building referred to in this Act. The memorial may include fountains, gardens, walks, stained glass windows, or other building appurtenances visible and accessible to visitors, and in harmony with the architectural and landscape design of such building. The Administrator may conduct a competition to select a designer for the memorial authorized by this section. Such competition shall be open to landscape and other architects, artists, artisans, and designers.

"(b) The Administrator shall provide maintenance for such memorial."

ASSISTANT ADMINISTRATORS OF THE ENVIRONMENTAL PROTECTION AGENCY

STAFFORD AMENDMENT NO. 2114

Mr. BAKER (for Mr. STAFFORD) proposed an amendment to the bill (S. 1696) authorizing three additional Assistant Administrators of the Environmental Protection Agency; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) the President, by and with the advice and consent of the Senate, may appoint three Assistant Administrators of the Environmental Protection Agency in addition to—

(1) the five Assistant Administrators provided for in section 1(d) of Reorganization Plan No. 3 of 1970 (5 U.S.C. Appendix) (hereinafter in this Act referred to as the "Reorganization Plan");

(2) the Assistant Administrator provided by section 26(g) of the Toxic Substances Control Act (15 U.S.C. 2625(g)); and

(3) the Assistant Administrator provided by section 307(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 6911a).

(b) Each Assistant Administrator appointed under subsection (a) shall perform such duties as the Administrator of the Environmental Protection Agency may prescribe.

SEC. 2. (a)(1) Section 5313 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"Administrator of the Environmental Protection Agency.".

(2) The second sentence of section 1(b) of the Reorganization Plan is amended by striking out ", and shall be compensated at the rate now or hereafter provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313)".

(b)(1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"Deputy Administrator of the Environmental Protection Agency.".

(2) The first sentence of section 1(c) of the Reorganization Plan is amended by striking out ", and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314)".

(c)(1) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new items:

"Assistant Administrator for Toxic Substances, Environmental Protection Agency.

"Assistant Administrator, Office of Solid Waste, Environmental Protection Agency.

"Assistant Administrators, Environmental Protection Agency (8).".

(2)(A) Section 26(g)(2) of the Toxic Substances Control Act is amended by striking out "(A)" and ", and (B) be compensated at the rate of pay authorized for such Assistant Administrators".

(B) Section 307(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking out ", and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5, United States Code".

(C) Section 1(d) of the Reorganization Plan is amended by striking out ", and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315)".

DISTRICT OF COLUMBIA RETIREMENT REFORM ACT AMENDMENTS

MATHIAS AMENDMENT NO. 2115

Mr. BAKER (for Mr. MATHIAS) proposed an amendment to the bill (S. 1625) to amend the District of Columbia Retirement Reform Act; as follows:

On page 7, line 10, after the word "appropriated" add: "for the fiscal year commencing October 1, 1984, and each fiscal year thereafter,".

SOLID WASTE DISPOSAL AUTHORIZATION

HART AMENDMENT NO. 2116

(Referred to the Committee on Environment and Public Works.)

Mr. HART submitted an amendment intended to be proposed by him to the bill (S. 757) to amend the Solid Waste Disposal Act to authorize funds for fiscal years 1983, 1984, 1985, 1986, and 1987 and for other purposes, as follows:

On page 11, line 2, strike the quotation mark and the second period.

On page 11, after line 2, insert the following:

"'(d) BAN ON DISPOSAL IN UNLINED SURFACE IMPOUNDMENTS.—Effective two years after the enactment of the Solid Waste Disposal Act Amendments of 1983, no hazardous waste may be disposed of in a surface impoundment which does not have at least one liner and a leachate collection system which comply with the requirements for liners and leachate collection systems in regulations promulgated under this section, and no permit may be issued after such date of enactment for a surface impoundment which does not have at least one liner and a leachate collection system which comply with such requirements. The Administrator shall determine whether to modify the requirements of this subsection in the case of surface impoundments receiving solid waste from the extraction, benefication, or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore, if such solid waste is subject to regulation under this subtitle, and shall, if he so determines, so modify such requirements to the extent such modified requirements assure protection of human health and the environment.'.".

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, August 3, to hold a hearing to consider the nomination of Thomas Pickering to be Ambassador to El Salvador.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, August 3, to hold a hearing on S. 1059, the Equal Access Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

NATIONAL PARALYZED VETERANS RECOGNITION DAY

● Mr. STAFFORD. Mr President, I am pleased today to call attention here to the fact that this is National Paralyzed Veterans Recognition Day. Legislation to establish this observance was signed by the President on August 1 (Public Law 98-62). In the Senate, the legislation was designated Senate Joint Resolution 106 and authored by the distinguished chairman of the Veterans' Affairs Committee, Senator SIMPSON. I am proud to have been a cosponsor.

The paralyzed veteran surely evokes the utmost in emotional response from every citizen. Admiration is mingled with emotion. These veterans, wounded in action, fight on; for them the war continues, the enemy this time is pain, discouragement, despair. The rest of us watch, encourage, and help in every way we can to appreciate what their battle for America has cost and is costing them.

I understand that there is to be a special stamp to commemorate the paralyzed veteran. That, too, is a fitting tribute. While resolutions and stamps cannot cure or even alleviate pain and disfigurement, they do draw once again to the fore the attention of the public in a way that makes us ponder and appreciate our own freedoms still preserved in this world of turmoil and threat because of these valiant fighters.

We resolve to take up the burden from them and pray that we might bear it with something of the same dignity and courage as they have done and are doing.

I am sure this Senator speaks for all in wishing Godspeed to the paralyzed veterans of America.●

NINTH ANNIVERSARY OF THE INVASION OF CYPRUS

● Mr. SARBANES. Mr. President, 9 years ago negotiations were underway to seek a peaceful and just solution to the crisis on Cyprus, when in a deliberate decision to break off the negotiations Turkish troops occupied 40 percent of the island republic. That brutal action resulted in the displacement of some 200,000 persons from their homes, the destruction of churches, hospitals, and schools, the expropriation of 70 percent of the island's productive capacity. Several thousand persons disappeared and even today remain unaccounted for.

In 9 years—nearly half a generation—the situation has changed very little. Turkish troops continue to occupy the seized territories. The beautiful coastal town of Famagusta remains deserted, many of its inhabitants living within sight of the homes to which they are prevented from returning by armed force. Nonetheless, the displaced Cypriots have worked hard to mend broken lives, to keep families together and to rebuild the institutions and enterprises so needlessly and wantonly destroyed.

The world is not indifferent to the continuing injustice on Cyprus. Earlier this year the 37th session of the U.N. General Assembly adopted by the overwhelming vote of 103 to 5, with 20 abstentions, a resolution calling for the reestablishment of the sovereignty, independence, and territorial integrity of Cyprus, respect for human rights and fundamental freedoms of all Cypriots and the withdrawal of all occupation forces. By voting overwhelmingly for continuing aid to Cyprus, Congress has expressed its strong commitment to a just and peaceful solution to the Cyprus conflict and it is regrettable that the United States, which is strongly committed to supporting intercommunal talks on Cyprus under the auspices of the U.N. Secretary General, should have withheld support from the forthright U.N. resolution.

Mr. President, I ask that the U.N. resolution be printed in the RECORD.

The resolution follows:

[37th session, agenda item 37, May 10, 1983]

QUESTION OF CYPRUS

ALGERIA, CUBA, GUYANA, INDIA, MALI, SRI LANKA, AND YUGLOSLAVIA: DRAFT RESOLUTION

The General Assembly,

Having considered the question of Cyprus,

Recalling its resolution 3212 (XXIX) of 1 November 1974 and its subsequent resolutions on the question of Cyprus,

Recalling the high-level agreements of 12 February 1977 and 19 May 1979,

Reaffirming the principle of the inadmissibility of occupation and acquisition of territories by force,

Greatly concerned at the prolongation of the Cyprus crisis, which poses a serious threat to international peace and security,

Deeply regretting that the resolutions of the United Nations on Cyprus have not yet been implemented,

Recalling the idea of holding an international conference on Cyprus,

Deploring the fact that part of the territory of the Republic of Cyprus is still occupied by foreign forces,

Deploring the lack of progress in the intercommunal talks,

Deploring all unilateral actions that change the demographic structure of Cyprus or promote faits accomplis,

Reaffirming the need to settle the question of Cyprus without further delay by peaceful means in accordance with the provisions of the Charter of the United Nations and the relevant United Nations resolutions,

1. *Reiterates* its full support for the sovereignty, independence, territorial integrity, unity and non-alignment of the Republic of Cyprus and calls once again for the cessation of all foreign interference in its affairs;

2. *Affirms* the right of the Republic of Cyprus and its people to full and effective sovereignty and control over the entire territory of Cyprus and its natural and other

resources and calls upon all States to support and help the Government of the Republic of Cyprus to exercise these rights;

3. *Condemns* any act which tends to undermine the full and effective exercise of the above-mentioned rights, including the unlawful issue of titles of ownership of property;

4. *Welcomes* the proposal for total demilitarization made by the President of the Republic of Cyprus;

5. *Expresses its support* for the high-level agreements of 12 February 1977 and 19 May 1979 and all the provisions thereof;

6. *Demands* the immediate and effective implementation of resolution 3212 (XXIX), unanimously adopted by the General Assembly and endorsed by the Security Council in its resolution 365 (1974) of 13 December 1974, and of the subsequent resolutions of the Assembly and the Council on Cyprus which provide the valid and essential basis for the solution of the problem of Cyprus;

7. *Considers* the withdrawal of all occupation forces from the Republic of Cyprus as an essential basis for a speedy and mutually acceptable solution of the Cyprus problem;

8. *Demands* the immediate withdrawal of all occupation forces from the Republic of Cyprus;

9. *Commends* the intensification of the efforts made by the Secretary-General, while noting with concern the lack of progress in the intercommunal talks;

10. *Calls* for meaningful, result-oriented, constructive and substantive negotiations between the representatives of the two communities, under the auspices of the Secretary-General, to be conducted freely and on an equal footing, on the basis of relevant United Nations resolutions and the high-level agreements, with a view to reaching as early as possible a mutually acceptable agreement based on the fundamental and legitimate rights of the two communities;

11. *Calls* for respect of the human rights and fundamental freedoms of all Cypriots, including the freedom of movement, the freedom of settlement and the right to property and the instituting of urgent measures for the voluntary return of the refugees to their homes in safety;

12. *Considers* that the de facto situation created by the force of arms should not be allowed to influence or in any way affect the solution of the problem of Cyprus;

13. *Calls* upon the parties concerned to refrain from any unilateral action which might adversely affect the prospects of a just and lasting solution of the problem of Cyprus by peaceful means and to co-operate fully with the Secretary-General in the performance of his task under the relevant resolutions of the General Assembly and the Security Council as well as with the United Nations Peace-keeping Force in Cyprus;

14. *Calls* upon the parties concerned to refrain from any action which violates or is designed to violate the independence, unity, sovereignty and territorial integrity of the Republic of Cyprus;

15. *Reiterates* its recommendation that the Security Council should examine the question of implementation, within a specified time-frame, of its relevant resolutions and consider and adopt thereafter, if necessary, all appropriate and practical measures under the Charter of the United Nations of ensuring the speedy and effective implementation of the resolutions of the United Nations on Cyprus;

16. *Welcomes* the intention of the Secretary-General, as expressed in his report,[1] to pursue a renewed personal involvement in the quest for a solution of the Cyprus problem and, in view of this, requests the Secretary-General to undertake such actions or initiatives as he may consider appropriate within the framework of the mission of good offices entrusted to him by the Security Council for promoting a just and lasting solution of the problem and to report to the General Assembly at its thirty-eighth session on the results of his efforts;

17. *Decides* to include in the provisional agenda of its thirty-eight session the item entitled "Question of Cyprus" and requests the Secretary-General to follow up the implementation of the present resolution and to report on all its aspects to the General Assembly at that session.●

STATUS REPORT ON THE BUDGET

● Mr. DOMENICI. Mr. President, I hereby submit to the Senate a status report on the budget for fiscal year 1983 pursuant to section 311 of the Congressional Budget Act.

Since my last report the Congress has completed action on H.R. 2973 to repeal interest and dividends tax withholding, and H.R. 3069, making 1983 supplemental appropriations.

The report follows:

REPORT TO THE PRESIDENT OF THE U.S. SENATE FROM THE COMMITTEE ON THE BUDGET, STATUS OF THE FISCAL YEAR 1983 CONGRESSIONAL BUDGET ADOPTED IN H. CON. RES. 91—REFLECTING COMPLETED ACTION AS OF JULY 29, 1983

[In millions of dollars]

	Budget authority	Outlays	Revenues
Revised 2d budget resolution level	877,200	807,400	604,300
Current level	869,086	806,920	604,294
Amount remaining	8,114	480	0

BUDGET AUTHORITY

Any measure providing budget or entitlement authority which is not included in the current level estimate and which exceeds $8,114 million for fiscal year 1983, if adopted and enacted, would cause the appropriate level of budget authority for that year as set forth in H. Con. Res. 91 to be exceeded.

OUTLAYS

Any measure providing budget or entitlement authority which is not included in the current level estimate and which would result in outlays exceeding $480 million for fiscal year 1983, if adopted and enacted, would cause the appropriate level of outlays for that year as set forth in H. Con. Res. 91 to be exceeded.

REVENUES

Any measure that would result in revenue loss exceeding $0 million for fiscal year 1983, if adopted and enacted, would cause revenues to be less than the appropriate level for that year as set forth in H. Con. Res. 91.

[1] A/37/805 and Corr. 1.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., August 1, 1983.

Hon PETE V. DOMENICI,
Chairman, Committee on the Budget,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 308(b) and in aid of section 311(b) of the Congressional Budget Act, this letter and supporting detail provide an up-to-date tabulation of the current levels of new budget authority, estimated outlays and estimated revenues in comparison with the appropriate levels for those items contained in the most recently agreed to concurrent resolution on the 1983 budget (H. Con. Res. 91). This report for fiscal year 1983 is tabulated as of close of business July 29, 1983, and is based on our estimates of budget authority, outlays, and revenues using the assumptions and estimates consistent with H. Con. Res. 91.

Since my last report, Congress has completed action on H.R. 2973 to repeal interest and dividends tax withholding, and H.R. 3069, making 1983 Supplemental Appropriations.

[In millions of dollars]

	Budget authority	Outlays	Revenues
1. Enacted	864,283	804,503	604,400
2. Entitlement authority and other mandatory items requiring further appropriation action			
3. Continuing resolution authority			
4. Conference agreements ratified by both Houses	4,802	2,418	−106
Current level	869,086	806,920	604,294
2d budget resolution revised, H. Con. Res. 91	877,200	807,400	604,300
Current level is under resolution by	8,114	480	6

Sincerely,

ALICE M. RIVLIN,
Director.●

EAST TIMOR

● Mr. TSONGAS. Mr. President, as I am sure my colleagues remember, I have long been concerned about the situation of the former Portuguese colony of East Timor. Though the situation is not as severe as it was several years ago it still remains a serious problem.

On June 12, Parade magazine published a story by Irving Wallace, David Wallechinsky, and Amy Wallace concerning the terrible toll the conflict in East Timor has had on its people and the land.

While today the situation has improved, we still receive reports of hunger and malnutrition, and human rights violations. In addition, the Indonesian Government continues to severely restrict emigration from the island, and also to limit visits by foreign journalists and diplomats.

Mr. President, I urge my colleagues to join me in calling attention to this "forgotten war." I ask that the Parade article be printed in the RECORD.

The article follows:

[From Parade Magazine, June 12, 1983]

THE FORGOTTEN WAR

(By Irving Wallace, David Wallechinsky, and Amy Wallace)

Few people have heard of East Timor, yet it is the scene of one of the bloodiest wars in recent history—a war being fought with arms supplied by the U.S.

In August 1975, in the face of a coup and civil war, Portugal yielded its sovereignty over the eastern half of Timor, a small island 400 miles north of Australia. On Dec. 7, shortly after East Timor proclaimed its independence, Indonesian forces attacked with tanks, napalm and heavy artillery, shooting unarmed civilians in the streets. Indonesia's plan was to crush the new nation and annex it—quickly and without attracting notice.

U.S. officials knew of the attack in advance. Yet they did nothing to prevent it, though it was carried out with U.S. weapons supplied specifically for defense. When the UN voted to condemn the aggression five days after it began, this country abstained, presumably fearful of antagonizing oil-rich and pro-West Indonesia.

Today, East Timor is a devastated land, its farms abandoned, its towns in ruins, its economy destroyed. Disease and starvation are rampant, and the bloodshed continues. Out of a population of 600,000, as many as 250,000 have died in the war. Though Indonesia officially annexed East Timor in 1976, the remaining nationalist guerrillas occasionally emerge from their mountain strongholds to battle Indonesian troops. Meanwhile, thousands of civilians and political prisoners have been forced into internment camps, where they risk disease, torture, sexual abuse and murder.

Despite East Timor's desperate plight, only a few food shipments have been allowed in since 1979; the Red Cross was finally permitted to treat political prisoners in 1982. Most foreign journalists, however, still are barred. Thus the holocaust rarely receives press coverage. During talks with President Reagan in Washington last year, Indonesian President Suharto never mentioned East Timor. Neither did President Reagan.●

NATIONAL PET WEEK

● Mr. HATFIELD. Mr. President, I do not believe there is a Member of this body who does not maintain a special place in his or her heart for a childhood pet, or for that matter, adulthood pet or pets. In my household alone, we have housed dogs, birds, cats, fish, gerbils, guinea pigs, and white mice, and we have even housed a 3-foot iguana and a boa constrictor. And those are just the ones that I know of.

I think the special bond that exists between a pet and its owner is one of the greatest joys in life. That is why so many Americans were outraged when it was learned that the Defense Department was going to shoot animals for purposes of scientific research on wounds and wounds treatment. Fortunately, the Defense Department has chosen not to implement this planned study. The auxiliary to the American Veterinarian's Medical Association recognizes the week of May 2 through May 6 as "National Pet Week" to promote veterinarian service and the proper care of animals. And in virtually every American household, special days are set aside for the singular purpose of honoring that special animal or animals that give life such an added dimension and quality.

In the July 10, 1983, issue of the Sunday Peninsula Herald, there was a magnificent piece written by King Harris on the subject of animal care and love entitled "My Married Life With an Animalholic." For the benefit of other Members of this body who would probably be fairly categorized as "animalholics," I ask this article be printed in the RECORD.

The article follows:

[From the Herald Weekend Magazine, July 10, 1983]

MY MARRIED LIFE WITH AN ANIMALHOLIC

(By King Harris)

Once again my wife's incorrigible free spirit was rocking our marriage boat.

She was using her high octane weapons—a saucy smile, luminous blue eyes and an infectious laugh—to pierce the armor I don to hide my play-it-safe-mentality.

She is Elizabeth, a life enhancer with a well deserved sense of herself. Hibernating beneath her elegant surface, however, is a major character disorder which surfaces with irritating frequency.

Without dripping marital malice, suffice it to say, Elizabeth is an animalholic. The doyenne of animal lovers. Animals are her oxygen and I have to share her life with 7 dogs, 6 horses and one cat. We were moving from Pebble Beach to Middleburg, VA., hub of the horse world. Elizabeth was insisting that we all travel together, a hark back to the wagon train days of yore.

The thought of herding 14 animals through Arizona, New Mexico, Texas, Oklahoma, Arkansas, Tennessee and into Virginia made my scalp prickle and my comfort antennae quiver.

"Why don't we fly the horses to Dulles airport?" I suggested. "Seems to me that would simplify matters."

"At about $1,000 per horse," Elizabeth said, giving me an ear-to-ear grin.

I suddenly developed a hardening of my monetary arteries at the thought of shelling out $6,000. "How about shipping the horses by commerical van?"

"Why honey," Elizabeth purred, "you know commerical transportation would be beneath the dignity of our horses who are used to such an amply cushioned life. After all, our horses are not horses. They're family." Her voice was rich in jocular tones.

Elizabeth's affinity with animals was always creating storm clouds. My animalholic wife is a drum beater for animal rights. Her dimunitive size camouflages a coil of toughness and a strong streak of individualism. Whenever someone abuses an animal, Elizabeth erupts like a geyser and pelts the human predator with a fusillade of choleric barbs. Unfortunately, many of those human predators were our friends. We have more ex-friends than any couple I know.

At times I think there are only 15 words in her vocabulary: "If you don't stop mistreating that animal, I'm going to call the humane society."

Life with my animalholic live-in is often chaotic and seldom dull. And this trip was no exception. As I was pouring over the road maps, I had the eerie feeling I had built my nest in the wrong tree.

Our ark was made up of two large horse vans, a 1971 Cadillac and an old Volks station wagon. The dilapidated horse vans had an irrational bias against steep hills and puffed up the grade toward Flagstaff, Ariz., with an erratic oompah, oompah beat. When darkness overtook our cortege, the vans, ablaze with lights looked like the Taj Mahal in moonlight.

The logistics for our inane 3,000-mile safari were more complicated than the Normandy invasion. Imposing mounds of maintenance and support systems were needed: tons of fodder for the animals who ate like gluttonous dinosaurs; blankets; water buckets; tack; flea powder; wheelbarrows; litter boxes; chains for a snow emergency and a sextant in case we got lost.

With 14 animals, it took both ingenuity and guile to find suitable accommodations where we could hunker down for the evening.

Scattered along Route 40 are several good "horse motels," most of which cater to small quarter horses. Our six, behemoth jumpers and dressage thoroughbreds all were about 16.2 hands and king sized beds were a necessity. Fairgrounds were usually ideal—unless Elizabeth felt the stalls were not hospital-antiseptic. On such occasions she would whip our goulash cavalcade into the night until proper lodgings were found.

Unfortunately, the chauffeurs for the two horse vans were drivers, not horsemen. One was a bearded bearlike man with prison-yard muscles but with no desire to use them. The other driver was a funny looking owlish leprechaun who smoked a meerschaum pipe and his only form of communication was a shrug of the shoulders. As soon as they helped us put down the ramps when we stopped each night, they took off for the nearest pub to get lobotomized with the natives.

Elizabeth would unload the horses, and I took care of the feeding chores. Then, as my inamorata didn't want her pampered horses to be homesick in a strange barn, we would spend an hour hauling out of the vans and setting up their personal fetishistic memorabilia.

At the end of a long day, and with ineffable dignity, I would clean up the droppings in the vans. We were feeding the horses hot bran to avoid constipation and, as a result, the piles got higher and the shovels heavier as the trip progressed. At times, the disposal problems became as difficult as getting rid of nuclear waste. One evening the drivers hung around to watch, but not to help me. I overheard one whisper, "What a lucky fellow. All he has to worry about is where he steps."

The only major brouhaha during the trip occurred when Elizabeth's crochety 20-year-old gray mare jumped ship. Her name is Ah Declare and she was tagged with that appellation the day we bought her as a 3-year-old in the hills of Virginia. A rider was putting her through her paces and when she sailed over a large stack of hay bales, an old farmer remarked, Well, Ah do declare."

Ah Declare is a superbly endowed jumper and a very dexterious mare. She can pick any lock, kick the eye out of a fly and assemble and load a 30mm machine gun in the dark.

The cagey mare usually follows Elizabeth right up the ramp without a lead rope but this particular morning she was feeling a bit dancey. Kicking up her heels, Ah Declare flew over several 5-foot post and rail fences,

and turning on the turbos, galloped up the highway, her blanket flying in the wind.

Cold, mixed with hot, panic gripped my stomach as we jumped into the car to give chase. Elizabeth's face was as white as Banquo's ghost. When we turned onto the paved thoroughfare, two flakey characters with frosted glasses whizzed by us on motorcycles and skillfully turned Ah Declare down a side road. After giving us the "V" sign, they roared off on their weird black and red bikes. The irrascible gray mare, moving with dancer's grace, vaulted over a closed gate marked "private," landing in the middle of a flower garden.

When Ah Declare saw her mistress, she cut loose with her tantalizing southern whinney, trotting over and putting her head on Elizabeth's shoulder, a petunia still in her mouth. I was thankful Ah Declare was all right and no one was home to see the havoc she had rendered to the garden. But my euphoria was punctured when I noticed the gate was locked.

Unfizzled, Elizabeth put a halter on her mare, threw me the blanket, asked for a leg up and popped Ah Declare back over the gate. They ambled toward the vans, Elizabeth with blossoms in her cheeks and Ah Declare's eyes crinkling with happiness.

I am a point-to-point man. A world class paranoid worrier. Let's get there. Stick to the schedule. Conversely, watching the clock is not in Elizabeth's repetoire of behaviors. As cruise director, she would grind the perambulators to a halt merely to point out our country's cornucopious bounty to her four-legged companions. Or she would stop for an hour just to chimneysweep her mind.

Elizabeth insisted we pull into every rest area so the dogs could use the loo. During a stop in Oklahoma, she spotted a lost puppy. While I impetuously pawed the ground, Elizabeth sent out flares to the highway patrol, patiently holding the puppy on her lap, refusing to budge until things were resolved. Four hours later, after the owners of the dog must have discovered their loss, they returned to a tearful reunion. Elizabeth couldn't hide the excitement in her eyes, but my stomach was seething at the delay. Elizabeth and I spent the rest of the day walking on brittle grass.

My most vexing problem in Elizabeth's little corner of animal Elysium is the internecine discord among some of our male dogs. All seven are russet-colored Hungarian Vizslas, with that certain chutzpa of those who know they are to the manor born. With the exception of Zsa Zsa, the only female, they weigh in at about 65 pounds.

Unfortunately, they are not out of the same litter, and two of the older dogs, Barron and Brandi, are loaded with ingrained hostility toward their nephews, the newcomers. On the other hand, Nahdor, Sergei and Beau, are ever alert to do battle at the least challenge from their uncles. Consequently, they must be kept separated. We pair them by families.

Since all are golden-reds and all about the same size, after a couple of martinis, I often pair the wrong dogs in the same room. The result is blood on the floor, offkey yelps and a background chorus that sounds like a combination Holy Roller camp meeting and guerrilla raid.

The other two dogs, Sandor—brother of the uncles but father of the nephews—and his daughter Zsa Zsa—niece of the uncles and sister of the nephews—are the swing couple. They get along with both groups. To me, it's so confusing that I have considered having a chart of their family tree tattoed on my hand to consult it every time I open a door.

During our laborious journey, we discovered that for once the similar color and size of the dogs worked to our advantage.

Realizing that the "Pets Welcome" motels meant one or perhaps two small poodles, we parked the cars a block from the motel to hide our seven jumbo jets. And to complicate matters, we needed separate quarters to keep the fighting males apart. I would saunter up to register, explaining we had a dog but as my snoring upset my wife's psyche, we needed two rooms.

To circumvent the innkeepers, we took the dogs out for their nightly walk one at a time. The motel managers never caught on.

One evening, however, an irate proprietor shouted at Elizabeth: "You've been walking that poor dog for over two hours and he's lifted his leg on every bush in the place. He must be exhausted. If you don't let him get some rest, I'm going to call the humane society."

We were 10 days out of the starting gate when we hobbled into Middleburg, Va. I felt like a tropical derelict. "Never again," I said, wagging my finger at Elizabeth, "will I play a supporting role in such a Byzantine psychodrama. If you decide to return the same way, trade me in now while I still have some resale value."

Exactly two years later we repeated the same asinine parade of flotsam in reverse, moving Elizabeth's entire animal fiefdom back to Pebble Beach, and taking with us an additional two more horses and five cats.

I like to lead a very structured life and again Elizabeth tested the fragile ways of a marriage. But, as George Balanchine, the famed American choreographer once said: "Woman is goddess and man her bemused worshiper."

And even after 6,000 miles of unnecessary foolery, my animalholic paramour continues to tilt my windmill and is still my roommate, on the road and at home.●

FORTIETH ANNIVERSARY OF FATHER GALLOS' ORDINATION

● Mr. SARBANES. Mr. President, it is with a great deal of personal pleasure and pride that I commend to my colleagues' attention the forthcoming celebration of the 40th anniversary of the ordination of Father George P. Gallos to the holy priesthood of the Greek Orthodox Church. Father Gallos and his wife, Anna, will be honored on September 3, 1983 at a testimonial dinner given by the AXIOS Committee which is comprised of members of two sister communities, Sts. Constantine and Helen Parish in Annapolis where he now serves and Annunciation Church in Baltimore where he served for 11 years. This joint celebration is indeed a fitting tribute to a man who has served the Greek Orthodox Church and our community with great dedication, commitment, and concern.

His story is one of great faith and compassion and all who have been blessed to know him have been eternally touched by his genuine love for humanity. I am proud to call him a friend, one who has been a spiritual adviser and source of strength.

The son of Greek immigrant parents, Father Gallos was born in Minneapolis in 1915 and attended public schools there before entering Macalester College in St. Paul, Minn., in 1933. While at Macalester, he was chosen to participate in an exchange scholarship program with Yenching University in Peiping, China, thus becoming the first student ever to represent Macalester in the Orient. While there he traveled extensively in Japan, Formosa, and Korea. On his return trip to America, he traveled through Siberia, Poland, Austria, Hungary, Yugoslavia, Greece, Italy, France, and Canada. He was ordained as a priest in October of 1942 in Lowell, Mass. by Bishop Athenagoras Cavvadas. In 1943, he received his diploma in theology from the Greek Orthodox Seminary in Pomfret, Conn.

Father Gallos was married to Anna Gerotheou, the daughter of the Greek Orthodox priest in Somerville, Mass. in 1942. Wherever father has served, he has had Presvytera Anna at his side. She has been a spiritual partner in every sense and indeed, with father, we take pride in the enormous contribution she has made through her God-given creative talents to the perpetuation and advancement of Greek Orthodox liturgical music.

In addition to ministering to the spiritual and educational needs of his many parishioners, Father Gallos has also stressed the importance of improving the church's physical facilities. An indication of this is his explicit wish to postpone the joyous celebration of the 40th anniversary of his ordination—actually reached on October 18, 1942—until the completion of the new community center being built by Sts. Constantine and Helen Parish in Annapolis.

A truly extraordinary man, Father Gallos has served as an adviser, educator and friend, deeply dedicated to the spiritual development of the many parishioners he has served throughout his service. We of the Greek Orthodox community in Maryland are fortunate indeed to have the counsel and friendship of such a distinguished and devoted pastor. A testament to the high esteem in which Father Gallos and Anna are held is eloquently expressed by the members of the AXIOS Committee in their invitation to the testimonial dinner of September 3. I ask that it be reprinted at this point in the RECORD.

Since 1942 Father Gallos has been AXIOS. And during his 40 years as a priest, his wife Anna has complemented his ministry. Theirs has been a life of sharing, caring, and giving * * * together, for our Lord. This is a rare opportunity for us, who have been the recipients of their sharing, caring and giving, to say "Well done, thou good and faithful servants."●

MORRIS SILVERMAN, SMALL BUSINESSMAN

● Mr. COHEN. Mr. President, it is a truism that small businesses are the backbone of the American economy. But it is not until we closely examine the careers of individual small businessmen and women that we see how important these people are to keeping our economy afloat.

Morris Silverman, of Lewiston, Maine, epitomizes all that is positive about small businesses in this country. Morris is the owner of Louie's Clothing Store in downtown Lewiston, which for 53 years has faithfully served people in the Lewiston area and throughout Maine. He has also opened other clothing stores in addition to Louie's.

The principles which have guided Morris' business career are simple: Treat all customers with respect, and give people their money's worth. These guidelines are easy to enunciate but harder to actually accomplish, and Morris' reputation throughout Maine as an honest and fair businessman indicates that he has made good on his commitments.

A recent article in the Lewiston Daily Sun details Morris' career, and I ask that it be printed in the RECORD for the benefit of my colleagues. I am proud to call Morris a personal friend, and I am certain that my colleagues will enjoy reading about his inspirational career.

The article follows:

[From the Lewiston (Maine) Daily Sun, July 26, 1983]

FIVE STORES IN LEWISTON'S DOWNTOWN: HE'S SPENT A LIFETIME IN THE CLOTHING BUSINESS

(By Joe O'Connor)

On the wall of Morris Silverman's office in Louies' clothing store on Lisbon Street, among the paintings, citations from groups like Lewiston Tomorrow and Lewiston High School, an autographed photo of Sen. Bill Cohen and a newspaper-page-sized Chanukah greeting card signed by the advertising department of the Lewiston Sun-Journal, is a small brass plaque with a quotation from Mark Twain.

"Always do right," the plaque reads. "This will gratify some people and astonish the rest."

The statement seems to fit Morris Silverman well. While other Lisbon Street merchants have left the downtown, or are struggling to hang in against competition from the malls and suburban department stores. Silverman's five clothing stores have thrived and provided an anchor for the redevelopment of Lewiston's downtown.

To say the clothing business is Silverman's life is almost an understatement. "I've been working in the business since I was nine years old," he says, fondly recalling the days when he would commute on Fridays from his family's summer home at Pine Point, taking the train from Old Orchard Beach to Portland, then switching to another train that took him to Lewiston.

There, he would join his father, Louis Silverman, at the store that bears his name, and work all weekend until his father took him home on Sunday.

His father founded Louie's 53 years ago at 292 Lisbon St.; in 1939 the store relocated to its present location at 281 Lisbon. The store is virtually unchanged since then—it still carries most of the same work clothes and boots, and they can be found on the same shelves they occupied 44 years ago.

That lack of change is thoroughly deliberate. "We keep it this way because we have an unbelievable number of old-time good customers who really enjoy coming into this store," Silverman says, "We've no intention of changing this store at all; and we won't change our method of doing business."

Silverman cheerfully admits that "we haven't kept up with the times with self-service." In fact, service to customers is Silverman's guiding philosophy. For example, if a customer comes into Louie's looking for work boots, "We ask him where he works, because someone who works on a cement floor all day is going to want a different kind of sole than a farmer who spends his day walking in dirt.

"We do this so they'll be satisfied with what they buy, because if they are, they're going to come back."

Paying attention to such details has brought Silverman much success—but it has been paid for with hard work. After working for his father through high school, he attended the University of Maine at Orono, but in his third year he left school when his father was taken ill. The following year, 1954, his father died, and Silverman took over the operation of the family store.

Silverman's first new enterprise was in 1960, when he opened Edward's clothing store, where Lita's is now. That store, specializing in men's sport and dress clothing, would eventually be relocated across the street and renamed The Brass Rail.

Shortly afterward, he opened the Barefoot Trader. Specializing in jeans and tops for men and women, the store "met with instant success," Silverman said. It was soon joined by the Boys and Girls Factory Outlet, and a few years later by Bargainland.

While each store has its own specialty, they are bound by Silverman's philosophy of service and brand name quality. While low price is a major aim, Silverman said everything sold in his stores "has to be respected by me, so it will be respected by the customer."

Silverman is quick to heap praise and affection on his employees: "They share my philosophy of service. . . . I think of them as my family, and they treat me like part of their family. . . . We truly enjoy every day."

Like most downtown merchants, Silverman has kept a close eye on the development of shopping malls over the years. What he sees doesn't bother him: Although the malls "offer some things we don't, air-conditioning and longer hours. . . . There are services we can provide that the malls can't provide.

"There's no way we could operate in a mall and sell for the same prices we do—the overhead is just too much higher." And, he adds, "There is a character and dignity (to the downtown) that the malls cannot provide."

"They're another place to do business—I have to make my businesses as appealing as I possibly can, and not worry about what they're doing. If I pay attention to my customers and their needs, I don't have to worry about the malls."

Asked what he would say to anyone considering establishing a business on Lisbon Street, Silverman said: "If you are willing to work hard and give your customers good honest value, you could be successful here quicker than anywhere else. Because, number one, you're locating in a downtown retail center that has been a retail center for many years, and especially today, when the street looks good and looks functional.

"If you're willing to work hard, it'll be easy. But if you think easy means not working hard, you won't make it."

As to what he means by working hard: "I used to work seven days and six nights a week; I did that for 25 years. It's just the last few years I've been working six days and two nights." He laughs. "I feel like I'm on vacation."

Another factor that can make or break the downtown, Silverman said, is the area's landlords, who he urged "to make the same effort to retain the tenants they have as they do to get new tenants.

"How often do you see a sign in a vacant window saying: 'Will remodel to suit tenant'? Why not do it to keep the tenants you have."

Above all, Morris Silverman believes, a businessman should respect his employees and customers:

"People deserve respect, and when they get it, they appreciate it."●

CENTRAL AMERICA

● Mr. GOLDWATER. Mr. President, no matter what the situation happens to be at any particular moment that demands the intelligent or unintelligent attention of the major news media of this country, Members of the Congress immediately assume that it is a national matter of increasing importance to our citizens.

As an example, we hear more and more talk, day after day, about what is going on with the big issue being Central America. The question, of course, is the President right or wrong in doing what he is doing? On one side are those people who want to sound like peace lovers; who forget that we did not lose the last two wars because of the incompetence of our military. We lost them because of the total incompetence and ignorance of our civilian leaders in Washington. Presumably, all those "peace at any price" people want to go on taking away from the President his constitutional right to defend our country. What puzzles me is that every one of the 535 of us, when we came in these Chambers, raised our hand with the other hand on the Bible and swore we would uphold the Constitution against all enemies, foreign and domestic.

Yet, here we are with the House of Representatives, taking away one more little piece of strength of the President's war making and peacekeeping powers. When you add that to the already unconstitutional War Powers Act, it makes this particular Senator wonder what are we up to. We are a collection of 535 people, not many of us trained in the act of war and not many of use trained or knowing much about the art of foreign

policy. Nevertheless, we are just 535 people who have been elected by their constitutents to do something in Washington, for the States or communities they come from and, more or less, to heck with the United States.

Now, this particular Senator happens to think that the United States has been looked upon by the world as a paper tiger for too long. In fact, if we allow Central America to go by the boards without putting up any kind of an argument, we will no longer be a world power. And, let me reemphasize that, we will no longer be a world power. Our economic foundation is wobbly, our national morale has been somewhat shaky, but, I have more faith in the American people than anything else I can think of right now. So, it gets down to the question: Has the President done the right thing in sending the fleet, the Marines and Air Force, to patrol off the shores of Central America to indicate that we are going to put up with any more foolishness? In my opinion, he has done exactly right. In fact, he could go so far to intervene with any attempted shipment of equipment from Cuba or an other country to the Central American countries. If the attempt were made to transport that equipment in by air, a couple of our fighter pilots could take care of that with no trouble at all. An act of war? Certainly, it is an act of war, but, unless a country is willing to display its determination to keep peace, even if that demonstration requires an act of war, then war is the ultimate end. Having lost the last two wars through the ineptness of Presidents and Secretaries of Defense, I do not think winning wars in the future is going to be a very rosy prospect.

I just want to go down on the side of defending my President in this act he has taken to send military equipment to Central America for the cause that he recites, military exercises. On top of that, I will also support him in whatever equipment he wants to send to our friends in Central America so that we can maintain that part of the world as an area that is friendly to the United States.

Let us not forget, it is the last piece of real estate left on this Earth that directly affects the United States and that we cannot afford to lose.●

VLADIMIR TULOVSKY

● Mr. TSONGAS. Mr. President, I would like to bring to my colleagues attention the case of Vladimir Tulovsky, his wife Galina and their son Daniel, Soviet citizens who have been denied the right to emigrate from the Soviet Union.

The Tulovskys first applied for an exit visa to Israel in 1975. In 1976 they were refused permission to leave for no apparent reason. They have applied regularly once or twice a year hoping to excercise their basic human right to live in the country of their choice.

Vladimir held a job teaching mathematics at the Military Academy in Moscow. His wife has a master's degree and has worked for several years as an engineer. Neither had access to confidential information and it is hard to understand why the family should not be allowed to leave Russia.

The Tulovskys are just one of the many cases of Jews in the Soviet Union who are unable to excercise their rights as citizens. Jews are treated as second-class citizens and not permitted to practice their religion, yet they are also not allowed to immigrate to a country where they could practice their religion freely. Several years ago, there was some hope for Jewish emigration but currently the outlook is desperate.

The U.S. Government should not remain idle while the Soviet Government continues to violate the basic human rights of its citizens. We must speak out on behalf of people like Vladimir Tulovsky and his family. I urge by colleagues in the Senate and the House, as well as President Reagan, to work with me on behalf of the Tulovsky family.●

AMERICAN CONSERVATION CORPS

● Mr. MOYNIHAN. Mr. President, I had hoped the Senate would act favorably upon S. 27, a bill establishing an American Conservation Corps, before we broke for the August recess. The Energy and Natural Resources Committee reported this legislation on May 13 by a vote of 18 to 1, and a companion measure passed the House on March 1 with the support of 301 House Members. It appears that we will be unable to take this bill up before recessing, but I expect it to be one of the first orders of business when we come back in September.

I should like to share with my colleagues an extraordinarily perceptive and persuasive essay arguing for the creation of an American Conservation Corps by Mr. Sydney Howe, executive director of the Human Environment Center. Mr. Howe's piece appeared in the August 2, 1983, Washington Times, and I ask that it be printed in the RECORD.

The article follows:

[From the Washington Times, Aug. 2, 1983]

TIME FOR AN OFFENSIVE AGAINST YOUTH UNEMPLOYMENT

(By Sydney Howe)

Unemployment remains a national shame. Youth unemployment, in fact, increased from 23 percent in May to 23.6 percent in June, with the figure for black youth rising from 48.2 percent to an awful 51.2 percent. This long-festering structural dilemma defies the one-tenth percent June gain in total employment.

Fortunately, one well-prepared attack on youth joblessness is ready for congressional action. Groups concerned with unemployed youth, the environment, cities, minorities and other causes have been allied for more than two years in efforts to create a new national conservation corps. Despite White House objections, the American Conservation Corps Act passed the House of Representatives overwhelmingly in March and is ready for Senate action.

In the spring of 1981, with federal budget slashing in full swing, House hearings led by Rep. John F. Seiberling, D-Ohio, and then-Rep. Toby Moffett, D-Conn, assessed youth conservation-work progams proposed for extinction. At the same time, groups struggling to save those programs met in a national conference to begin, perhaps stubbornly, planning for a new corps. The congressmen and the conferees found vast evidence of accomplishment and produced a compeling case for a new-day Civilian Conservation Corps.

Some others were less enthusiastic about this rather "obvious" idea, or saw advocates as whistlers in the dark after the twilight of the New Deal. Liberal Democrats Seiberling and Moffett, however, knew they were onto job creation and resource conservation that even conservatives, pressed for unemployment remedies, could espouse.

The nation's conservation-corps experience, from 1933 on, has been one of hard work and high productivity. Many young people have been saved from disaster by a productive paying job, while renewing resources for the economy and the public welfare.

Youth-conservation crews of the late 1970s were less heralded, but their output for each dollar invested would have cost at least $1.20 otherwise. Idled young men and women lined up for physically tough jobs to restore city parks and national parks, clean blighted neighborhoods, stem erosion, provide flood-emergency service and plant trees and fight fires in national and state forests.

The 1,800-member California Conservation Corps, with origins in former Gov. Reagan's own Ecology Corps and now the flagship of several state-funded corps programs, has earned deep bipartisan support. Gov. George Deukmejian recently retreated from plans to sever much of its $35 million-per-year funding.

In October 1981, Seiberling and Moffett, drawing from their hearings and the multi-group-conference concensus, joined by CCC alumnus Rep. Edward R. Roybal, D-Calif., and Republican Silvio O. Conte of Massachusetts and Douglas K. Bereuter of Nevada, introduced a new corps bill. Designed to remove some recognized flaws of the past, this American Conservation Corps Act has been refined for sensitivity to many interests—mayors, Indians, government employees, CCC alumni and the states, to name a few—by Democrats and Republicans in unison—and passed in March by 301-87.

The House bill authorizes $300 million annually for the corps, to be administered by the Interior Department. Enrollees must be unemployed, and "special consideration" is required for recruitment of "economically, socially, physically and educationally disadvantaged youth."

Men and women age 15 to 25 are to serve in conservation centers run by federal, state and local governments and by tribal and nonprofit organizations, performing labor-intensive urban and rural land protection, maintenance, and rehabilitation tasks. Fee arrangements would allow private-land

projects, as in timber-stand improvement and strip-mine reclamation, and non-Corps workers would be protected against displacement. With normal turnover, some 100,000 youth could be served each year.

Although most corps-prone states plan small operations without ACC funds, all look to the federal program for major expansion. New York, for example, would receive $8.6 million per year under the House-voted ACC.

The Congressional Black Caucus wants the ACC, as do Hispanic and Indian groups, the U.S. Conference of Mayors, the AFL-CIO and national conservation organizations. Seventy-four Republicans voted "yea" in the House against administration wishes, because, as Rep. Don Young, R-Ark., said, "In both the long and the short run, a program such as this is good for America. It is an investment in both her resources and her people." Sens. Daniel P. Moynihan, D-N.Y. and Charles Mathias, R-Md., have led this effort in the Senate.

The congressional budget for fiscal-year 1984 allows $300 million for ACC, but some senators seek to cut that minimal funding by more than one-half. Fortunately, a growing counterforce includes Republican Sens. John H. Chaffee of Rhode Island, Mark O. Hatfield of Oregon, John Heinz of Pennsylvania, and Robert T. Stafford of Vermont among others—plus, no doubt, most of the American people.

The White House might find this a cost-effective opportunity, both economically and politically, for close cooperation with the Congress.●

CIVILIAN CONSERVATION CORPS

● Mr. LEVIN. Mr. President, a proud legacy has been left on the landscape of America by a program begun 50 years ago. Charles Symon of Gladstone, Mich. writes in a recently published remembrance:

Some people trace the beginning of The Depression years to the stock market crash of 1929; others say it was a happening which had been accumulating since World War I. Either way, more than 14 million men were without jobs across this nation and the economic problem was a world wide one. In Michigan the unemployment figure reached two million, and one out of every four employables was looking for a job. Relief rolls swelled as men went on the dole, soup kitchens appeared to feed the hungry, men of all ages "hit the roads" to search for work wherever it might be found. Banks, mills, factories, stores, mines, canneries, woods operations—many of them ceased operations, for there was no market for their products or services since people did not have money to buy them.

In March 1930 there were 500,000 jobless in Michigan. In April of 1932, 338,000 persons in Wayne county were receiving public aid, and in some other counties the percentages drawing relief were: Kalkaska 85.5, Keweenaw 81.5, Lake 75.2, Baraga and Roscommon 75, Antrim 70, Ontonagon and Mackinac 67, Gladwin 58.2, Ogemaw 55, Mason 35, Ingham 27, Kent 26, Oakland 24.8.

Into this void stepped the CCC and a grand mix of other "alphabetical agencies" of the federal government. Franklin D. Roosevelt had been elected the nation's President and immediately set out to change the sordid picture. Mr. Roosevelt had been elected in 1932 and took office March 4, 1933.

On March 21, 1933, there was read in both Houses of Congress a message from the President on the CCC program: "I propose," the President said, "to create a Civilian Conservatioin Corps to be used in simple work, not interfering with normal employment, and confining itself to forestry, the prevention of soil erosion, flood control and similar projects."

On March 31, 1933, a bill embodying the President's idea was signed by Roosevelt, setting in motion a force of men, tools and ideas unprecedented in American history. Originally the plan was to enroll 250,000 young men in 200-man camps across the country for 6 months."

Among the accomplishments in Michigan are:

Forest stand improvement (acres), 204,460.

Trees planted, reforestration, 484,981,000.

Lookout houses and towers, 1.

Telephone lines (miles), 2,065.

Truck trails and minor roads (miles), 6,989.

Fish stocked, 156,660,922.

But more than that, the CCC brought pride to its enrollees, taught young people new skills and helped lift us out of a depression.

On August 19, 1983, former enrollees will gather in Escanaba, Mich. to celebrate the 50th anniversary of the CCC. My hat is off to a job well done and a program worth remembering.●

PASSAIC COUNTY, N.J., COMMUNITY COLLEGE

● Mr. LAUTENBERG. Mr. President, over the last several months it has been my privilege to serve as a member of the industrial policy task force organized by our able and distinguished minority leader, Senator BYRD. A particular concern of mine on the task force is the set of policies we either have or could have to address the needs of displaced workers. There is a crying need in my State of New Jersey and across the Nation to assist those who have lost their jobs after years of faithful and able service in many occupations, but particularly our basic industries.

I was delighted to see an article recently in the New York Times devoted to the work of Passaic County Community College in my hometown of Paterson. President Gustavo A. Mellander of that institution has fostered a compassionate and timely program to provide computer science classes to the unemployed free of charge. This undertaking is, in the words of President Mellander, "a very, very inexpensive way to help people who need help."

Mr. President, I commend the work of this school to my colleagues and ask that a copy of the New York Times article be printed in the RECORD.

The article follows:

FREE COURSES OFFER JOBLESS A 2D CHANCE

(By William E. Geist)

PATERSON, N.J., June 27.—On a hot summer's day, children in this city performed air borne somersaults on a mattress in a rubble-strewn lot and frolicked in the spray from a fire hydrant. Able-bodied men grouped on street corners, drinking from things concealed in brown paper bags and fanning themselves with the sports pages of newspapers. A man on the radio talked of the "discomfort index." The temperature edged above 90 degrees and the unemployment rate neared 15 percent.

A few blocks away, at Passaic County Community College, a number of the unemployed sought relief from all this, availing themselves of a new program that is offering free classes for the jobless, a program that is gaining interest from educators around the state and across the nation.

Richard Midgley, 42 years old, sat in an air-conditioned classroom struggling to communicate with an unforgiving ACE 1000 microcomputer that does not speak English and seemed rather to enjoy flashing "Reenter" and "Error" on the screen. Mr. Midgley was learning the language of the computer—called Basic—so that he can find a new job, a new career.

"The world has changed," he said, and he finds himself unemployed, his 24 years in industry seemingly counting for nothing in the job market. He worked most of that time at a local plant that manufactured heat resistant heavy equipment and, like so many other industries, moved from the Northeast. His latest job was with a manufacturer of industrial transmissions, but we was laid off last year when sales fell 40 percent.

"When I graduated from high school," he said, "college didn't seem important. You went to work, worked your way up and made a good living."

Mr. Midgley said that he and his wife were "struggling along" on unemployment compensation and their savings account and that he could not have afforded the $250 necessary to take the two data-processing courses in which he is now enrolled. He is optimistic, and school officials say that he has reason to be. His instructor, John Scalice, who has 23 years of experience in data processing, said Mr. Midgley could probably gain an entry-level job in the field after these two summer courses.

"We cannot keep our data-processing students long enough to complete their two-year degrees," said Gustavo Mellander, president of the college, of the program that began two weeks ago. "Demand for them is enormous."

"We have already received calls from several colleges around the country," he continued. "I believe all colleges—both two-year and four-year—should do this. We have a social obligation. This is a very, very inexpensive way to help people who need help."

Mr. Mellander says that by placing the unemployed students in spaces available in existing classes, it costs the college "$5 per student to set up a file." Accountants for the college say it is costing the school an estimated $6,000 to $8,000 in tuition and fees that the unemployed students would be paying, but Mr. Mellander responded, "None of them would be here if they had to pay. " Moreover, he said, most of the students find that they are eligible for financial aid for education, and many may enroll here full time.

School officials reported "a flood" of telephone calls from interested people in late March when the college's board approved the program. Thirty-eight unemployed people enrolled for the current summer session, and 100 to 150 are expected for the fall term.

"So many of them," Mr. Mellander said, "expressed fears that they just were not good enough to go to college, not college material, or that they were too old."

"Most," he explained, "are from families where college was not even discussed. Working in production industries, such as the manufacture of dyes and chemicals and textiles, was a way of life. Most of those companies are gone now. Our programs are geared to mature people who have been laid off and need new skills."

He said that most of the unemployed students were taking data processing, but that many were also taking business administration and secretarial skills.

"Some are taking psychology and history, however," he said. "I doubt that many will complete two-year programs. A lot of them are under tremendous pressure to get back to work."

Mr. Mellander called the unemployed students "highly motivated."

"They are victims," he said. "They lost their jobs through no fault of their own. The world changed."

Although many of the students interviewed had been the victims of layoffs at factories, others taking advantage of the program included Marilyn Potter, a schoolteacher who could not find a job after staying home for a few years with her young children; Carl Scheiner, an epileptic who lost his job as a security officer because he could not obtain a driver's license; Cora Harris, a social worker with a master's degree who wants to change fields, and Vincent Lewis, who was trained as a helicopter mechanic in the Army and cannot find a job.

Under Mr. Mellander, the community college began a program in 1976 waiving tuition for people over 60 years old. He has plans to begin a program of free classes for divorced women so they can learn new skills.

Mr. Lewis, who is married and has three children, had dropped a computer course at the college because he could not afford it. "This is a second chance for me," he said.●

ANN ARBOR CHURCH CELEBRATES 150 YEARS

● Mr. LEVIN. Mr. President, the Bethlehem United Church of Christ, Ann Arbor, Mich. will celebrate 150 years of service to its congregants and the community on August 20, 1983. I would like to take this opportunity to recognize that milestone.

In the late 1820's and early 1830's, many German Protestant immigrants settled in the Ann Arbor area. Desiring to worship in German, they wrote Switzerland's Basel Mission to request a pastor. On August 20, 1833, Rev. Friedrich Schmid arrived to help found one of Michigan's first German congregations.

The church was formally organized on November 3, 1833, as the First German Evangelical Society of Scio. The next month, the congregation completed a modest log structure at the site of the present Bethlehem Cemetery. They built a second church in 1849, and in 1896, dedicated the present stone structure. In 1945, the congregation became an Evangelical and Reformed Church; it joined the United Church of Christ in 1958.

Throughout a century-and-a-half, this church has served as a cornerstone of the Ann Arbor community. I commend and congratulate Bethlehem United Church on its many accomplishments and services.●

RIDE FOR LIFE

● Mr. LEVIN. Mr. President, on June 15, 1983, approximately 35 Harvard-Radcliffe students left Seattle, Wash., on a 3,800-mile bicycle ride. The trip has taken them over the Rocky Mountains, across the Great Plains, through the Midwest—including my home State of Michigan—and they will be back in Cambridge, Mass., by mid-August. Their goal is to raise $250,000 for Oxfam-America, a charitable organization devoted to fighting world hunger and encouraging self-help projects around the world. In addition to raising money, the students hope to alert the public to the issues of world hunger.

The students arrived in Detroit on Friday, July 29, and were welcomed by the Harvard Club of Eastern Michigan. They have maintained a 75-mile-a-day travel schedule and give presentations on the world hunger problem to church and community groups along the way. Accommodations and some food for the bikers are donated by local religious and hunger organizations.

As a Harvard gradutate, I am happy to see these students take part in "Ride for Life." I am gratified to see that they are goal-oriented and concerned with our world problems. On behalf of the people of Michigan, I was pleased to help provide a welcome to the Ride for Life team to Detroit and I wish them well in the final leg of their journey.●

HUNGRY FOR A FOOD POLICY

● Mr. HOLLINGS. Mr. President, today's front page newspaper stories announcing still growing problems with hunger and malnutrition and the fact that the poverty rate has hit the highest point since 1965 frankly come as no surprise to those who have advocated different views than the pernicious policies of the Reagan administration. Those stories state that President Reagan is perplexed with the problem of hunger and malnutrition that is again returning to this land of vast resources. True to form, however, the President asked his aides to put together a task force for a 90-day study to determine why people are hungry and what the Federal Government can do about it. The press reported that he thought that the Government is taking care of the people—estimated at as many as 40 million—and he intends to find out why this is not being done. He needs to look no further than the Oval Office and reflect a little on the policies of his administration. As Harry Truman once said, "The buck stops here." Harry did not need a commission, panel, or task force to tell him that either.

I, for one, have served in this body long enough to know from whence we come regarding the problem of hunger and malnutrition and the serious penalties it not only imposes on its victims but our Nation as well. And there are others here who have the institutional service and memory. It was some 15 years ago that I stumped my home State and other parts of the Nation to learn first hand the story of hunger and poverty in America. What I and others discovered was shocking. There were literally millions of underfed and hungry people in this land of abundance. Cases of kwashiorkor and other starvation related diseases were found. In many poverty areas, rates of nutrition deficiency diseases among our children equaled those of Third World countries.

In the face of this national disgrace our country and its leadership exhibited its true greatness and responded with a noble effort to eliminate hunger from our midst. And for a time we were succeeding. But this centuries old and most resilient threat to mankind once again got a toehold in America in 1981. But for the policies of President Reagan we would not be witnessing the rejuvenation of the hunger and malnutrition in America.

President Reagan say he is perplexed. Even a casual observer of the facts can see what is happening. Reagan might be perplexed; well, I am angry. The many beneficial gains we have made in our war on hunger have been canceled by the know-nothing policies of this administration.

Consider the facts. Today, due in no small part to the policies of the Reagan administration, we have:

Higher unemployment than in any other recession since the Great Depression ended four decades ago;

A larger proportion of Americans below the poverty line than at any time since 1965; and,

The deepest cuts in social programs of the poor—and food programs in particular—in recent history.

If you simply consider the President's 1984 budget proposals you will know why the task force on food assistance will have to look no further than the Oval Office to find the real culprit. The President's 1984 budget proposals would aggravate hunger.

FOOD STAMPS

At the very time that the President calls for a task force to study hunger, his own administration is pushing for legislation on Capitol Hill that would take food away from millions of the poor. In April, the nonpartisan Congressional Budget Office (CBO) issued a study of the administration's recently proposed food stamp legislation, which is now pending before Congress. CBO reported that under this legislation 62 percent of all food stamp households, or 4.9 million households, would have their benefits cut, and 87 percent of these benefit reductions would be borne by households below the poverty line;

Four out of every five of the poorest households—those with incomes below half of the poverty line—would have their benefits cut. Half of the poverty line is less than $5,000 a year for a family of four, and less than $2,500 for an elderly person living alone;

One million elderly and handicapped households would have their food stamps cut and would lose an average of $250 each in stamps each year; these elderly and handicapped persons would, on average, lose more than one-fourth of the stamps they now receive;

CBO also reported that contrary to administration claims that its food stamp proposals would achieve most of their savings through error reduction, only 3 percent of the savings would actually be achieved in this manner.

WIC

The administration continues to push for a reduced level of funding for the special supplemental food program for women, infants, and children (WIC program). The administration's budget request would, according to CBO figures, require the termination of over 600,000 low-income pregnant women, infants, and children from the program next year, despite the fact that these women, infants, and children have been determined by medical professionals to be at risk. The fact that a growing body of medical evidence shows that WIC is associated with a reduction in low weight births, infant mortality, and anemia has not deterred the administration from seeking these cuts. David Stockman has identified the WIC funding levels in the House and Senate agricultural appropriations bills, funding levels designed to avoid the cutbacks next year, as one of the reasons that bill, in its present form, is unacceptable to the administration and a candidate for a veto.

Stockman thinks that by cutting WIC we save money. Unfortunately he knows the cost of everything and the value of nothing. Evidence indicates that for every $1 spent on WIC we save $3 in medical costs. Currently WIC serves 2.75 million persons, but this is less than one-third of all who are eligible. Right now in parts of Detroit 33 out of 100 children do not live to see their first birthday. In parts of Chicago that figure reaches 55 out of 100 children. Nationally about two-thirds of infant deaths are associated with low weight births. WIC is specifically designed to meet this critical need. Yet the Reagan administration has turned its back on the problem. Reagan might be perplexed about hunger in America. I am perplexed by administration policies that have made hunger more of a fact of life for many more Americans.

CHILD NUTRITION

The administration is also proposing to cut more than $300 million a year from child nutrition programs. This would be on top of the deep cuts in the school lunch and other child nutrition programs enacted in 1981. At that time child nutrition was cut $1.5 billion which was a 30-percent cut below current policy and the largest reduction in any entitlement program. The administration now proposes to merge the three child nutrition programs that are most heavily targeted on low-income children into a block grant, with a 29-percent funding reduction. Over 90 percent of the Federal funds in these three programs, the school breakfast program, the child care food program, and the summer food program, go for meals served to low-income children.

If President Reagan is sincerely interested in stopping hunger in America, the first thing he should do is withdraw his pending budget proposals. We should watch what he does, not what he says.

But if you think the President's proposals for 1984 are bad, you should review what he has done since taking office. Let me offer a sample of the budget cuts already enacted and their impact.

The fiscal year 1984 budget cuts prepared by the administration would be on top of the deep cuts already enacted over the past two years. In a separate analysis issued this April, CBO reported that as a result of the budget cuts of the past 2 years:

The food stamp program has already been cut $1.4 billion in fiscal year 1983 and $2.2 billion a year in both fiscal year 1984 and fiscal year 1985. These figures assume no further cuts would be enacted for 1984 and 1985;

School lunch and other child nutrition programs have been cut $1.3 billion in fiscal year 1983, and more in subsequent years;

Food stamp and child nutrition programs combined have been cut a total of $12.6 billion over the 4-year period from fiscal year 1982-85.

The administration sometimes tries to defend these cuts by arguing that only higher income persons have been affected. This is patently untrue. The CBO figures show, for example, that only one-tenth of the budget savings made in the food stamp program over the past 2 years came from eliminating households over 130 percent of the poverty line. Well over half of the food stamp savings came from reducing benefits for households below the poverty line. With the rise of the poverty level to 15 percent of the population, the highest level since 1965, it is easy to see that the impact of these severe food stamp budget cuts have been amplified.

In addition, budget cuts in other programs have further exacerbated the hunger problem. Due in part to Reagan budget cuts in the unemployment insurance program, for example, only 40 percent of the unemployed now receive unemployment benefits—compared with two-thirds of the unemployed getting benefits during the 1975 recession. Many of the long-term unemployed have exhausted their benefits—and if they qualify for food stamps, their food stamp benefits are smaller than they would have been without the Reagan budget cuts.

Right today, food stamp benefits average 47 cents per person per meal.

The budget cuts actually enacted, deep as they have been, would have been far more severe if President Reagan had gotten all the cuts he sought last year. CBO reported last year that under the fiscal year 1983 Reagan food stamp proposals, 92 percent of the elderly and handicapped would have had their stamps reduced or terminated, and 94 percent of the working poor would also be harmed; 28 percent of all food stamps provided to the elderly and disabled, and over 40 percent of all stamps provided to the working poor, would have been wiped out. If President Reagan is perplexed with the present conditions facing the poor and hungry of our Nation, what would his reaction have been if the merciless spending cuts he sent up to Capitol Hill had been enacted?

Finally, I notice, President Reagan, in his memorandum of Edwin Meese regarding the task force on food assistance states that "It may be that some people are not aware that federal food aid is available to them." Those of us who believe very strongly in these important nutrition programs find that comment very ironic. One of the changes made in the food stamp program in 1981, at the Reagan administration's request, was to end efforts by States and counties to inform the elderly, the unemployed, and other low income persons of the availability of food stamps. Now the President admits, as some of my colleagues indicated at the time, that he was wrong.

The President, in his statement announcing a Presidential task force on food assistance seems to question whether a hunger problem really exists—or whether this is just a creation of the media.

The evidence on this issue exists and is readily available. I, for one, participated in hearings at the meeting of the U.S. Conference of Mayors held recently in Denver. Witness after witness came before our panel outlining the severe feeding problems in cities across America. The President has evidently not consulted this record or the many others that point up a growing hunger and malnutrition right here in the United States. The Nation's mayors—both Republican as well as Democratic—have stated unequivocally that hunger is the principal problem facing American cities today. The U.S. Conference of Mayors has issued a report on hunger problems in eight cities.

All of this, I suppose, is just further evidence of the fact that the "New Federalism" is really the "No Federalism" and just a one way street designed to send the basic problems back to the State and local governments—with no funds.

The Center on Budget and Policy Priorities, a very well respected Washington research and analysis organization, recently conducted a survey of 181 randomly selected emergency food agencies in 16 cities across the country. In over half the agencies surveyed, the number of persons coming to soup kitchens and emergency food pantries for help climbed more than 50 percent during the past year. In one-third of the agencies surveyed, the number doubled. One-fourth of the agencies reported that they had to turn people away. Two-thirds reported that they are now coping with the increased demand for food by strictly limiting the number of times any person or family can get food aid, usually to once a month.

Studies from a number of cities or local areas also exist. The problem is widespread and growing. It is significant.

Before I finish my remarks, let me take the opportunity to point out an inaccuracy in the President's statement that betrays a basic misunderstanding of food stamps eligibility requirements. The President stated that every poor person in the United States with income below 130 percent of the poverty line is eligible for food stamps. This is simply incorrect. Households must also meet a strict assets test that was established in 1971 and has never since been adjusted for inflation.

Households are not permitted to have more than $1,500 in countable assets, including all forms of bank accounts and cash on hand and also including the amount by which the market value of any car exceeds $4,500. To put the 1971 $1,500 assets figure imposed by President Richard M. Nixon into perspective, that figure amounts to only $630 in purchasing power. Reports from around the country indicate that some unemployed families living in poverty are unable to get food stamps because they cannot meet this much outdated assets test.

In conclusion, the only inference that can be logically drawn is that the President is either sadly ignorant of his own administration's policies in this area—or that the Commission is intended as a public relations effort to defuse the hunger problem for which the President, and the policies of his administration, bears such heavy responsibility. Frankly I will not attribute either logical conclusion to the President. For me it is enough that we can debate the subject and get the facts out for all to see. Obviously the issue is a growing political problem or the Presidential image makers would not have designated it a task force rank solution. I hope that when the facts are known, Mr. Reagan will be more than perplexed. I wish he would be angry, like me.

NATIONAL PARALYZED VETERANS RECOGNITION DAY

● Mr. MATTINGLY. Mr. President, I would like to take a moment to remind my colleagues that today, August 3, 1983, is National Paralyzed Veterans Recognition Day as designated by Congress and proclaimed by President Reagan.

This day honors those Americans who, as a result of service in our Nation's military forces, have suffered the catastrophic disability of paralysis. The designation serves as a fitting reminder of this Nation's continuing debt to those Americans who have sacrificed so much in the defense of our freedoms. We should never allow ourselves to take for granted the freedom for which they fought or fail to express our appreciation for their efforts.

Despite the hardships wrought by this disability, these veterans continue to contribute to our society. These achievements are largely due to the special strength of these individuals. It is most appropriate that we recognize the special debt owed to those who have suffered so much in our behalf. President Kennedy said that:

A nation reveals itself not only by the men it produces, but also by the men it honors and the men it remembers.

We do well to heed President Kennedy's words.●

THANKS TO JON DeVORE

● Mr. MURKOWSKI. Mr. President, I should like to take a moment to bid farewell to my senior legislative aide, Jon DeVore, and to thank him for a job well done. Jon is leaving the Hill to attend law school after several years of being intimately involved with the legislative process.

Jon has been a member of my staff since I came to Washington. He has served me with intelligence, loyalty, and diligence. His thorough, careful research has stood me in good stead during many a debate. His experience of over 7 years on the Hill—first with Senator STEVENS and then with myself—gave him the negotiating ability and legislative memory so essential to good staff work.

Jon has served Alaska well. Many citizens of our great State have benefited from Jon's able and ready assistance.

Jon was here throughout the Alaska lands debate, on the staff of the distinguished senior Senator from Alaska, Senator STEVENS. It is, therefore, appropriate that his last markup should be on S. 49, a bill to correct a flaw in the Alaska Lands Act. As always, his contribution to the development—and, I hope, passage—of this measure has been invaluable.

I know that Jon's experience in Washington will be of use to him in law school and in his future endeavors. His knowledge and experience have been invaluable to me and to his State. I wish him and his lovely wife Michelle, formerly of Senator STEVENS' staff, the best of luck.●

CLINCH RIVER AND THE PLAN—WHAT THE PROPONENTS AND PRESS SAY

● Mr. HUMPHREY. Mr. President, I have long opposed further Federal support of the Clinch River breeder reactor project. As I have noted on numerous occasions, the project is unnecessary to keep the United States ahead in breeder research and development. Indeed, even the Department of Energy (DOE), refuses to call the project a research and development effort in its budget justification. DOE calls it an industrialization project. And with good cause, Clinch River is simply the demonstration of a specific breeder design first drafted back in the middle 1960's. It is to breeder research and development what the Concorde is to supersonic air transport design research test beds—a commercial execution of a fixed design rather than pilot-scale work to generate data necessary to develop an advanced design. The later pilot-scale work is what truly matters. And DOE recognizes this: It always has had a separate breeder research and development program, known as the base breeder program and it now is funded at over $300 million.

Indeed, recently Secretary of Energy Hodel confirmed each of these points in separate interviews with the staff of the Washington Times and Nucleonics Week. In both interviews, which were reported nationally over United Press International's news service, Secretary Hodel emphasized that the base breeder program, not Clinch River was es-

sential to keeping the United States ahead in breeder development.

As for the alternative financing plan that DOE now is backing, I detailed my reservations in the RECORD July 29. The plan fails Congress fiscal year 1984 appropriations requirement than there be no further funding of the Clinch River project until a substantial industry cost sharing plan is enacted that would reduce the project's cost to the Federal Government. It exposes none of industry's venture capital to risk. It involves no increase of industry's original contribution to the project. And it actually increases the risks the Federal Government must assume in the probability that cost overruns and construction delays occur.

What makes these points doubly damaging, though, is that the plan's own authors actually confirmed them under questioning at a press conference held July 21. Government, not industry, they conceed would assume all risks under the plan and no new venture capital—industry investment or contributions—is made or placed at risk.

Mr. President, it is essential that the Senate understand the error of continuing to fund the Clinch River project and how insufficient the latest financing scheme is before voting on these issues in September. The pertinent passages from the press conference transcripts of Secretary Hodel speaking on the breeder are important reading as are the articles covering his breeder views and the financing plan's authors own candid admissions about the plan. Mr. President, I ask that these materials be printed in the RECORD, along with four recent editorials that critiqued the financing plan and the project in the Los Angeles Times, the Washington Times and the Washington Post.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TRANSCRIPT: CRBR PRESS CONFERENCE WITH DOE SECRETARY JULY 21, 1983

QUESTION. I read through the plan and I did not see additional money really additional money really coming from the utilities. Where is that?

HODEL. There is $150 million in equity, there is $175 million in the completion of the contribution commitment from the utility industry which would certainly not be available in the absence of such a plan, as well as the $675 million net from a bonded indebtedness to be undertaken by an entity which I believe is yet to be established.

QUESTION. But you're not talking about money contributed by the utilities over and above what has already been committed, but has not been pledged?

HODEL. In separate contributions, I do not think there are additional utility contributions, but it would be the completion of those and perhaps Mr. O'Connor should respond to that.

O'CONNOR. You are correct. The plan does not provide for additional direct utility contributions. But the financing plan does provide for a financing program that will meet roughly 40 percent of the additional cost or 1 million out of the estimated 2.4 billion dollars that will be required to complete the facility and this will be done largely through borrowing which will be issued at a latter date.

QUESTION. Your plan assumes you can borrow at a rate equivalent to a T bill rate equivalent to what the government can borrow. Is that assumption a reasonable assumption?

HODEL. I think perhaps it would be best to have Minor Warner, who is one of the representatives of four of the major investment firms that have reviewed this project and said that it is doable to comment on that Minor.

WARNER. Shall I just talk from here. Yes, part of the monies could be raised from the private sector will in fact be sold or priced at a relationship to Treasury obligations.

QUESTION. Mr. Minor, did the WPPSS debacle have any serious impact on your ability to obtain the government guarantees for this?

WARNER. Well, what is contemplated here is not government guarantees, but they are power contracts a, and b, we don't foresee any difficulty.

QUESTION. Are they like revenue bonds that you are talking about?

WARNER. No. As is described more fully in the plan they are really power purchased contract funds.

QUESTION. Bonds that are guaranteed by the sale of the power from the project.

WARNER. There are a number of provisions which in the contemplated contract when it's entered into we could cover all contingencies.

QUESTION. What would be the cost to the Treasury of tax benefits afforded participants?

WARNER. In terms of tax benefits, they would be in connection with the $150 million dollars of new equity contemplated under the plan conventional tax benefits.

QUESTION. How much is that?

WARNER. I think I will defer to legal counsel on that rather than try to give any estimate right now. . . .

QUESTION. Mr. O'Connor, if your cost run above 2.4 billion, will you come back and ask for more federal money.

O'CONNOR. Over the long haul, the hope is that the present funding would provide us to the point of completion. We entered in good faith into an agreement about a decade ago, provided for the utilities' contribution and what we thought at that time would be the government's contribution. There is no question that that cost, as with all other costs of building any kind of power plant have increased significantly during that period. But we did feel that this major contribution of a billion dollars in private financing would help considerable to ease the on-budget expenditures that would be required of the federal government and beyond that point of course, it really would be up to the federal government.

[UNKNOWN]. Well the Energy Department is going to try to sell this to the Congress on the grounds that this is it. This is the one and only last increment of money to Clinch River. Are you willing to promise that you won't ask for anymore money?

O'CONNOR. We can't promise that in good faith because we don't know what interest rates are going to be or what various sorts of licensing problems might or might not develop, but we do have a high confidence in our ability to complete this plant in 1989 and to have it operational in 1990, assuming funding is provided at this point.

QUESTION. What happens if this plan doesn't fly after September 30? Will you go on with any activities at Clinch River or do you have to just drop the ball.

O'CONNOR. It would be very very difficult, if not impossible, to proceed without the approval of this particular plant. So the end of September is really the date on which a lot hangs.

[UNKNOWN.] In my judgment, yes.

QUESTION. To get back to the financing plan, could you explain what exactly assuming there is some problem and the plant doesn't come into operation or doesn't get licensed or isn't completed, what exactly does the industry have at risk financially and what does the government have at risk financially? I am talking about the million dollar industry per billion dollar industry share?

[UNKNOWN.] The industry's total financial commitment, if you include the interest that has accrued on the funds already placed in escrow, will approximate $350 million dollars in total. The remainder of the additional monies to be secured $1.4 billion dollars would be the federal governments contribution.

QUESTION. What about that $650 million?

[UNKNOWN.] That would be the borrowing that would be issued against the power that would be bought by companies.

QUESTION. If there is no power, who eats that $650 million?

[UNKNOWN.] Well that's again an assurance that we would proceed with completing the plant. That would be the government in that case.

QUESTION. You are careful to use the word "on budget". Can one conclude from that, in fact, what you're doing is transferring a billion dollars from a non-budget account to an off-budget loan guarantee?

[WARNER.] These are future purchase power contracts. We would anticipate that the Department of Energy would enter into a contract with the borrowing entity which would cover various contingency. This kind of contract would be off-budget.

QUESTION. So basically the industry, through this plan, has not increased it's financial risk in this project by one penny.

[UNKNOWN.] Yes, but the important thing that we were asked to do was to come up with a plan, back in December, asked by the Congress to come up with a plan that would reduce the federal government's exposure and at the same time increase the amount of private capital placed in the program. And that's the plan that we submitted.

QUESTION. But you are not increasing the risk of the—

[UNKNOWN.] Yes. That is correct.

QUESTION. How can the federal government's exposure decrease, I mean their budget outlays are decreased, how does their exposure decrease?

[UNKNOWN.] Because we have a high confidence that the plant will be completed on time and operating.

QUESTION. But not high enough not to require a government transfusion?

[UNKNOWN.] That's correct. And we think that's an incentive to, all real incentive to keep our eye, everybody's eye on the ball on this one.

QUESTION. Under the future purchase power contracts, who are the buyers of these, utilities?

[UNKNOWN.] Yes. Utilities which include both investor-owned companies as well as municipals and REAs.

QUESTION. ——.

[UNKNOWN.] We can provide those with you, and include the Southern Companies, Duke Power. Gosh, we got a whole list of them that we'll be happy to—

QUESTION. Do those letters of intent, include agreements as to what price they will pay for the power?

[UNKNOWN.] No they do not. They contemplate in part, either payment of avoided energy cost, or in part, with respect to several of the rural electric co-ops of the southeast that interested in purchasing capacity from the project which would include more than energy costs. All the estimates in the plan are based on avoided energy cost . . .

QUESTION. Mr. Smith, apparently there are some utilities that feel that they would rather see the money being spent on Clinch River, being spent on R&D for a standardized design-type research for the advanced reactors now?

SMITH. That's not a view that's representative of the utility industry generally. Certainly not the position of my company or the companies with whom we work closely.

QUESTION. I guess if you had a choice, if the government came to you, if the Congress came to you and said we got so much money for nuclear research, do you want a breeder or do you want an R&D on light-water reactor, standardized light-water reactor, what should be picked?

SMITH. Well you need both of those and it's really not an either or. That's like saying to the Air Force you can have fighters, but you can't have bombers. Which do you want, fighters or bombers.

QUESTION. You make choices every day. Which one would you make?

LUNCHEON MEETING WITH DONALD HODEL, SECRETARY OF ENERGY

PRESENT

Donald Hodel, Secretary of Energy.
James R. Whelan, Editor and Publisher.
Ron Cordray, National Editor.
Ted Agres, Assistant Managing Editor.
Woody West, Editorial Writer.
Coit Hendley, Managing Editor.
Ralph Hallow, Deputy Editor, Editorial Pages.
Ed Rogers, National Reporter.
Connie Stewart, Press Secretary.
Philip Keefe, Deputy Press Secretary.
Dave Hoffman, National Reporter.
Paul Boyer, Intern.
Jeff Brown, Intern.
Larry Lambert, Photographer.

Mr. CORDRAY. Before you leave nuclear, could you talk a little bit about Clinch River?

Secretary HODEL. What do you want me to say about it?

Mr. CORDRAY. Should we continue it?

Secretary HODEL. We are working hard. We are in a process where we are trying to find a way to present a funding mechanism which will be satisfactory to the Congress.

Mr. ROGERS. Is there any hope?

Secretary HODEL. Yes, as long as there is life, there is hope. It sounds evasive only because it is. The fact is, nobody can tell you today what will happen to Clinch when we go forward with a proposal to the Congress. In other words, you would like a definitive answer from me, by golly, we are going to do so and so.

Mr. WHELAN. What is wrong with Clinch?

Secretary HODEL. I can't give that to you. If what you want is an analysis of the process, that I can give to you, and the process is, both Houses of Congress have now left the door open for us to put together a package and try to sell that package if we think it is salable to provide this alternate financing.

Mr. ROGERS. And there is the almost universal belief that industry was not going to come through with an adequate proposal.

Secretary HODEL. Well, it depends on who we talk to.

Mr. CORDRAY. Industry isn't even funding what they promised to in the first place.

Secretary HODEL. They are committed to complete their contributions, as I understand it.

Mr. CORDRAY. According to Mr. Humphrey.

Secretary HODEL. Well, if your desire is to kill the project, I am sure you will naturally put every negative interpretation on the events that you can. If you had to say today that all the pieces are together for a completely workable process, that is exactly what I have said to you. That it is not. That is what we are working on.

Mr. HALLOW. I think it is fair, Mr. Secretary, to point out that we understand, although you read every editorial that we write, you cannot remember every position we have taken on everything.

Secretary HODEL. That is right. I am a subscriber to your paper and to no other.

Mr. HALLOW. We have urged the death of Clinch River.

Mr. WHELAN. Let me ask the question, what is wrong with Clinch River? What is wrong with it?

Secretary HODEL. Well, ask the guy who wrote the editorial. I tried to save it.

Mr. HENDLEY. We don't trust him. We would like to hear your viewpoint.

Mr. CORDRAY. What is right with Clinch River?

Secretary HODEL. What is right with Clinch River is that the United States needs, in my view, to retain a position in the breeder program.

Mr. WHELAN. Sure.

Secretary HODEL. What is wrong with Clinch River is that you don't necessarily have to have Clinch in order to do that.

Mr. WEST. Aren't you holding our breeder research hostage to a project that has become so pervasively——

Secretary HODEL. There are those that believe that if you lose Clinch, you lose it all. Proponents of Clinch, of the breeder, will say to me, if we lose Clinch, we lose it all. I think it is entirely possible you could have an alternative approach, but if knowledgeable legislative strategists say that, you have to pay some attention to it. I mean, if you care about the program. If you don't care about the program, okay, we will take your advice, win, lose, or draw. So, you are trying to do something responsible.

Breeder R and D, I think, is essential if we are going to maintain any position—not Clinch, but breeder R and D is essential if we are going to maintain any position at the non-proliferation table.

HODEL: CLINCH BREEDER REACTOR UNNECESSARY

WASHINGTON (UPI)—Energy Secretary Donald Hodel said in an interview released Sunday the United States does not need the embattled Clinch River nuclear breeder reactor in order to keep its place in the international breeder program.

The Clinch River project in Oak Ridge, Tenn., is intended to be the Nation's first demonstration breeder reactor—a power-plant producing more uranium fuel than it consumes.

The Reagan administration under pressure from Congress agreed that the project only would be continued if the utility industry provided significant portions of its financing. The industry has been unable to reach agreement with the administration and Congress on a specific financing plan.

"The United States needs, in my view, to retain a position in the breeder program," Hodel told the Washington Times. "The Japanese, the French, the British, the Germans, the Russians are all proceeding with the breeder. They have urged us to continue and complete Clinch. I think it is partly because they are looking for evidence that we are going to stay active in the breeder program."

But, Hodel added, "you don't necessarily have to have Clinch in order to do that."

"Proponents of Clinch say to me, if we lose Clinch, we lose it all. I think it is entirely possible you could have alternative approaches," he said. He did not detail what alternative approaches might be taken.

Hodel said some people argue that other nations are ahead of the United States on some aspects of breeder technology, "and they are behind us in others."

Environmentalists oppose the U.S. project because they believe the fuel produced by the breeder will be used to make nuclear weapons. The nuclear industry wants the project because it believes uranium fuel will become scarce some time in the next century.

Hodel said many anti-nuclear and environmental activists are more interested in preventing the United States from achieving energy growth and development than in promoting their causes.

The activists "genuinely, generally oppose the growth syndrome and all that comes with growth," he said. "They correctly perceive that if you can choke off the energy supply to this country you will choke off the development of industry and jobs and commercial activity and transportation and the like."

Hodel charged opponents of industry on the acid rain issue "use an incredible point. There is no question there is something out there called acid rain. We do not know its total implication. We do not know what its sources are . . . (but there is) a fair chance that we will be faced with spending billions of dollars a year trying to alleviate some part of the problem.

"Proponents of a measure like the acid rain proposal vastly underestimate its cost to the society," he said.

[From the Nucleonics Week, June 30, 1983]

HODEL SEES R&D, NOT A MACHINE, DOMINATING U.S. BREEDER SCENE IF CRBR DIES

DOE will continue a base breeder program whether or not the Clinch River Breeder Reactor project is funded by Congress, but "we may not want a demonstration program," Energy Secretary Donald Hodel said in an interview last week. Among other things, the program keeps the U.S. active in the international nonproliferation arena and helps it retain the option to build a breeder in the future, Hodel said. He cautioned that his comments shouldn't be read as an indication that he thinks CRBR won't be refunded, because the final report on cost sharing must still be considered. Nor would failure to fund the project mean that the $270-million DOE requested for CRBR in FY-84 would necessarily be turned

toward other nuclear, or even energy, programs, Hodel told Nucleonics Week.

"The research work that needs to be done we still need to continue," Hodel said when asked about the fate of the base breeder program. "And in so doing, we continue to be participants in the international activities and we have proliferation benefits as well as the opportunity to keep the technology moving in such a way that when the United States decides it wants to go for a breeder, we've got a foundation laid that permits us not only to have the technical and the professional ability, but also presumably the ability to build a licensable project."

The U.S. remains on the "cutting edge of technology" in some aspects of the breeder, he said, and should remain there because it gives the U.S. something to offer in return for concessions and agreements concerning proliferation. Without the base breeder program, "we have lost our seat at the table with the rest of the world, which is proceeding with breeders. . . . If we back out of the program, forget it. I just can't see us doing that, at a very political level," Hodel continued.

[From the Los Angeles Times, July 28, 1983]

UNCLE SUGAR, CAUGHT IN THE CLINCH

On May 12 the U.S. House of Representatives voted 388 to 1 to kill the Clinch River breeder-reactor program unless private industry agreed to pay a substantial share of the cost. Six weeks later Energy Secretary Donald P. Hodel publicly conceded that the U.S. energy program could make do without the $4-billion nuclear project.

That should have been that.

But, lo and behold, President Reagan let it be known the other day that he not only supports Clinch River but also will campaign vigorously for a special $1.4-billon appropriation to keep the Tennessee project alive. Not only that, he also favors federal guarantees under which the taxpayer will bail out corporate and private investors if electric power from the breeder reactor cannot be sold.

All this comes at a time when Reagan is wrestling with massive federal budget deficits. Unless the projected deficits can be reduced, it will be very difficult to avoid high interest rates, renewed recession and a situation in which military spending will have to be cut much more deeply than the President himself considers prudent.

Fortunately, chances are very good that common sense will prevail in Congress, where enthusiasm for the Clinch River boondoggle is at a low ebb.

Unlike conventional nuclear-power reactors, which burn uranium, breeders both burn and breed plutonium; in fact, they are designed to produce more plutonium than they consume. This was a very attractive feature at a time when uranium was expected to become scarce and increasingly costly.

But times have changed since Congress first gave tentative approval to construction of a commercial-scale breeder reactor 13 years ago.

Leaving aside the fact that the United States should not be setting a bad example by embracing a power-reactor technology that can easily be used as a cover for nuclear-bomb production, the economic factors are all wrong.

More uranium reserves have been discovered. The demand for uranium reactor fuel has fallen way below earlier projections for several reasons, including the fact that nuclear-power reactors are neither as safe nor as economically efficient as had been expected. The General Accounting Office has estimated that breeder reactors probably will not be commercially attractive for 40 more years.

Meanwhile, instead of the original cost estimate of $700 million, the ultimate price tag is now expected to be at least $4 billion and possibly much more.

Under these circumstances Congress has become more and more reluctant to vote money for Clinch River. This spring it became obvious that the project would die unless the electric utilities and the nuclear industry agreed to pick up a substantial share of the costs. The resulting "cost-sharing" plan that has now received the President's backing was accurately described by Representative Richard L. Ottinger (D-N.Y.) as a "sham . . . an insult to the intelligence of Congress and the American people."

Under the proposal the federal government would spend $1.4 billion on top of the $1.5 billion that it has already sunk in the project. Private industry, which so far is committed to paying only $257 million of the total cost, would raise $1 billion more through the sale of bonds and equity shares in the project.

The catch is that these securities would be guaranteed by the federal government. In other words virtually the entire risk would be assumed by good old Uncle Sugar.

It's incredible that a President who has so often lectured on the evils of federal spending in general and subsidies in particular would throw his weight behind such an arrangement. It's up to Congress to save the American taxpayer from the consequences of this particular folly.

[From the Washington Times, July 27, 1983]

CLINCH RIVER AND CORPORATE WELFARISM

(By Smith Hempstone)

You have to wonder what Senator Majority Leader Howard Baker has in mind with his apparent willingness to endorse a scheme to keep alive the Clinch River breeder reactor. Getting his fingerprints all over this monstrosity won't do him any good in pursuing the GOP presidential candidacy in 1988. By then, it will be all too clear just how much of a fraud on taxpayers Clinch River is.

When the project was first authorized in 1971, it was supposed to cost $400 million, with the nation's electric utilities signing up to contribute $257 million. A year later, the projected cost jumped to $700 million, but the utilities demanded their share be frozen at $257 million.

Now the Energy Department admits the project will cost at least $4 billion to complete. Congress hit the roof over this, with the House defeating a funding bill which carried in the Senate by only one vote.

The lawmakers told the Energy Department to look at alternatives, "including reconsideration of the original cost-sharing arrangement, that would reduce federal budget requirements" for Clinch River. The upshot was a recommendation that the government use revenues that might be made from the sale of electricity from Clinch to back guaranteed bonds for the project. But those revenues were originally supposed to go directly into the U.S. Treasury to offset the project's costs.

Reception to this by Congress was cool, with its General Accounting Office noting that "the federal government still appears to retain most risks if the project fails or if cost overruns occur."

Nevertheless, the plan Baker has to decide to snub or go for now calls for Congress to obligate, in one up or down vote, $1.5 billion over the next seven years for construction. Just perfect for Clinch backers, since it would remove the issue from further congressional consideration for seven years.

Even lovelier for the nuclear industry, who wouldn't have to kick in another dime of its own. The proposal talks about another $175 million from the utilities, but this is already what they owe from their original pledge of $257 million plus interest.

The utilities insist they will not participate unless they're guaranteed tax benefits and a fixed rate of return on the bonds. And for good reason from their viewpoint. Although industry claims it's going to put up risk capital or equity shares worth $150 million, it wants the money to come from the taxpayers—that is, from the tax benefits the plan hands to industry.

The utilities, further, assume no additional risk for failure, delay or cost overrun. In fact, their plan emphasizes the government (i.e., the taxpayers) must guarantee all the tax benefits and a full return on investment plus interest for the government-guaranteed bonds. Never mind if the project costs more than expected, fails to work as well as expected, or never gets built, or if there's no market for the electricity it may or may not produce. Talk about corporate welfarism!

Energy Secretary Don Hodel has admitted that building Clinch River isn't necessary for maintaining America's position in breeder-reactor technology because our basic breeder research program would do the job. This basic breeder research is funded separately from Clinch and is already costing the government some $300 million a year. Apparently industry agrees with Hodel, since it doesn't think it should share Clinch River's costs by increasing its share of contributions beyond the measly 9 percent it has pledged—9 percent of $4 billion!

You want to know how this compares with other nations' cost-sharing on breeder work? Well, West Germany requires private industry to pay—not loan—29 percent, and when costs increase, the German private sector's share must escalate accordingly.

Japan, which supposedly is the world-champion at government-private industry coziness, requires at least 20 percent private-sector direct payments (not loans) to finance its commercial breeder effort. By the way, the U.S. utility industry originally offered to pay for half of Clinch River.

The French breeder program is paid for entirely by utility rate increases and foreign cost sharing: 51 percent by the French national utility, 30 percent from an Italian utility, and the balance by a consortium of German, Belgium and Dutch utilities.

You might put this question to Senator Baker and to the free-marketeers of the Reagan administration, who apparently remain enamoured of the project: Will the plan increase the private sector's management stake?

A "yes" would be hard to explain, since it's the Energy Department that would get even more say and less public scrutiny. If you think that's a smart idea, you have forgotten the mess that department made of oil and gas distribution and pricing before President Reagan ended controls on the petroleum industry.

The fact is, this plan continues to insulate industry from risk. So why in the world would Baker even consider pushing a plan

like this on the public? People who know him say when he has a chance to review what his plan is really about, he'll recognize it's not worth the game and that the real issue isn't this project but, as Secretary Hodel points out, keeping the basic breeder program going in order to retain U.S. lead in this technology, which is what Baker says is his primary concern, too.

[From the Washington Post, July 20, 1983]

DOUBLE STANDARD AT CLINCH RIVER?

The Clinch River breeder reactor is the great exception to the Reagan administration's rule against energy subsidies. The White House has never subjected the breeder to the same standards that it has applied elsewhere. Another attempt to rescue the breeder is now taking shape, and once again it requires an exemption to all the Reagan strictures against public spending and lending.

Congress refused any appropriation this year for Clinch River, declaring that there will be no more federal money until and unless somebody comes up with an acceptable plan for a larger share of private money. Part of the electric power industry has now come up with a proposal. The private money would be mainly in the form of loans guaranteed by the federal government. But guaranteed loans are not everybody's idea of a private contribution.

To complete the breeder reactor would, according to the Energy Department, take a further six years and $2.4 billion. The current financing plan comes from the Breeder Reactor Corp., which represents a group of utilities supporting the Clinch River project. This plan proposes that the utilities contribute another $150 million in equity, and the government put up $1.5 billion. The remainder would be raised by the guaranteed bonds, to be paid off by the breeder's power sales.

One obvious difficulty is in the utilities' contributions. State regulators are not visibly enthusiastic about allowing the utilities to pass them on to customers in their power rates.

As for the bonds, Sen. Gordon Humphrey points out that the arithmetic of repayments depends on some cost estimates that seem low and a predicted price for breeder power sales that looks remarkably high. The idea of the bonds arrives in a season when there seems to be rising concern both in Congress and in the administration over the scale of federal lending, and over the use of loans to circumvent the restrictions of a tight budget. It's a bad practice. Why make an exception for Clinch River?

The breeder reactor has only one justification. It gets more energy out of a uranium atom, by recycling it, than the present commercial reactors do. The Clinch River breeder was conceived at a time when it looked as though a uranium shortage lay ahead. But with new uranium discoveries, the economic case for the Clinch River breeder has evaporated at just about the same rate at which the construction cost estimates have been rising.

The immediate question is whether the White House will support this current financing plan with its $1.5 billion appropriation and its bond guarantees. If it applies the same standards to the Clinch River breeder that it applies to all the other energy technologies, the question will answer itself.

[From the Washington Post, July 2, 1983]

WILL CLINCH RIVER RISE AGAIN?

If a cat has nine lives, how many does the Clinch River breeder reactor have? It's true that there was no money for Clinch River in the energy appropriations bill that Congress just passed for the coming year. But you would be incautious to assume that the project is dead. It's a little too soon to celebrate.

Perhaps some money will be tucked into a supplemental appropriations bill. Or perhaps someone in Congress will start hearings on legislation for a financial reoganization. Meanwhile, construction crews are working double shifts in Tennessee on what they carefully call "site preparation," and three-quarters of the components have already been ordered or actually delivered. Hurrying to spend more money, the reactor project's managers keep asking whether, in view of all the money already spent, it doesn't make sense to go ahead and finish it.

No, it doesn't. The resistance to the breeder reactor is being led in the Senate by fiscal conservatives who have pointed out the very expensive fallacy in that logic.

But there's another and even stronger reason to abandon the breeder. The breeder runs on plutonium, a substance that is not only highly toxic but capable of being fabricated with only moderate difficulty into nuclear weapons. That job does not necessarily require the resources of a government. A sophisticated terrorist organization could make a bomb from stolen plutonium. Deliberately to develop a technology that requires this substance, and introduces it into the civilian economy, would be wanton.

The breeder was conceived at a time when uranium was scarce. But since then enormous reserves of uranium have been discovered, and it is clear that demand through at least the first half of the next century will be a small fraction of the original estimates. Recycling plutonium, with all its enormous risks, cannot be justified by any visible need.

Congress did not quite explicitly kill the Clinch River breeder in its recent appropriations bill. It only said that there would be no more money until there was an acceptable financial reorganization—meaning a larger contribution from the electric utilities that are supposed to be the beneficiaries. Some utilities, still committed to the idea, are now pushing for loans guaranteed by the government. If Chrysler got guaranteed loans, why not Clinch River?

The answer is that neither the utilities nor the federal government has the money to spare. The further and stronger answer is that, even if it were free, the breeder is the wrong path for nuclear energy to take.●

BROOKS ROBINSON IN BASEBALL'S HALL OF FAME

● Mr. SARBANES. Mr. President, on Sunday I was honored to join thousands of baseball fans from Baltimore in paying tribute to Brooks Robinson who was enshrined in Baseball's Hall of Fame in Cooperstown, N.Y. The outpouring of affection and admiration for this outstanding athlete and humanitarian—an Oriole player for his 22-year career—was truly remarkable.

The special nature of this event was fittingly described by one of Baltimore's most illustrious sports editors, John Steadman of the News American. "Magic moments create a flash of electrifying excitement," said Mr. Steadman of the events in Cooperstown on Sunday. To share some of that excitement with my colleagues, I ask that two articles by Mr. Steadman be printed in the RECORD.

The articles follow:

HE FIELDS THIS CHANCE FLAWLESSLY, TOO

(By John Steadman)

COOPERSTOWN, N.Y.—Magic moments create a flash of electrifying excitement. They can't be programmed or rehearsed, yet often prevail for posterity. But first there has to be a cause, a reason, a chemical mix—a catalyst.

In this scenic village where baseball believes it was born, Brooks Calbert Robinson Jr., a man of soft and gentle ways, was enshrined in the Hall of Fame. That's the most meaningful honor a player can receive, and he handled the ritual with a grace and style characteristic of his past.

It was Robinson reacting and responding at his best—sincere and sensitive, happy yet humble. He transmitted a genuine feeling of being grateful that the audience had come to share the most illustrious day in his life.

The Robinson ability always was of such magnitude that he didn't need to grandstand or play to the crowd. And it was precisely that way here as he made his formal entrance into the Hall of Fame with an acceptance speech typical of Robinson—sparkling, effective and comprehensive. It was representative of the way he played third base during 22 years for the Orioles.

Meanwhile, the pilgrims who came to Cooperstown to visit this extraordinary game's shrine that is so much a part of America, were truly fulfilled, mostly because of Robinson and the spirit he engendered.

The attendance—said to be 12,000—at the ceremony held at Cooper Park (which adjoins the Hall of Fame structure) was a marvelous tribute to Robinson, with all due respect to the other honorees; namely Walter Alston, not present because of illness, George Kell and Juan Marichal. In fact, the prevailing feeling was that Brooks brought his own following—and he did—even if he left his bat and glove home since retiring five years ago.

HIS DIGNITY, CLASS WAS SO TYPICAL

In the natural amphitheater where the induction was staged, there's an imposing statue of Cooperstown's most famous son, author James Fenimore Cooper. And even his bronzed hands seemed to be applauding Robinson's acceptance speech. The theme referred to the blessings he has received.

In this connection, in what took only nine and three-quarter minutes, Robinson touched all bases. He thanked God, parents, brother, wife, children, managers and George Haynie, his American Legion coach. And he thanked Paul Richards, the man who influenced him to come to the Orioles.

He emphasized that he was proud of Mayor William Donald Schaefer and Baltimore, which he called his "adopted home town." But it was Baltimore that was proud of him.

Hall of Fame installations, here since 1939, never had a crowd this size or such waves of applause. Not for Babe Ruth, Ted Williams, Willie Mays or any of the 184 former players, managers, umpires and ex-

ecutives whose exploits have hallowed these halls.

Mayor Schaefer was here. So were Donald Hutchinson, chief executive of Baltimore County, Senator Paul Sarbanes, as well as "Wild" Bill Hagy and Pat "The Bugler" Walker, who was dressed in an Oriole uniform and blowing a fugle bugle. A huge sign was unfurled that read: "Players Of High Caliber Are Very Few. Thank God Baltimore Had Someone Like You. Thanks, Brooks."

Another placard read, "No. 5 Is No. 1 With Us." Automobiles were decorated in the black and orange Oriole colors and carried his picture.

Cooperstown residents and the baseball hierarchy, including commissioner Bowie Kuhn and league presidents Lee MacPhail of the American League and Chub Feeney of the National had never seen a gathering so enthralled with any player. They were there to shout his name and to notify the watching world what it thought of him.

It was sheer fanaticism and before Robinson could offer a word, after he had been introduced by Kuhn, the cheering rang out for two solid minutes. And when he did speak he said all the right things.

"I thank God for the talent and the help in reaching the top," he said. "I think back to the devotion of my mother toward my welfare, the friendship of my brother Gary, the teaching of my father, and my parents who guided me through childhood. I thank the coaches, teammates and scouts who discovered and encouraged me. They believed in Brooks Robinson when others were doubtful."

And later he pointed out that as he counted his blessings, none were greater than his wife, Connie, and four children. He thanked them for supporting him and sacrificing for a father who was away half the year playing ball. And, toward the end of his comments, he added, "And I want to thank those that I forgot to mention."

Such insight is what has given Robinson enduring popularity. He doesn't know how to be abrasive or impolite and goes out of his way to help the downtrodden of the world—but in a manner that never seems patronizing. And his Baltimore admirers, including Mayor Schaefer, put on a pre-induction party without precedent at the Hall of Fame.

Baltimore, through its love affair with Brooks Robinson, was carried up the steps of the Hall of Fame and enshrined with him. That's the way he was hoping it would be.

HE'S PROVEN WHAT A SPORTS HERO IS ALL ABOUT

(By John Steadman)

Extraordinary human kindness and profound consideration, plus a rare gentility and gentlemanly refinement, are identifying characteristics of Brooks Robinson, who has always seemed to good to be true.

But he has never been a pretender who played to the crowd. He's a bona fide credit to himself, family and friends.

Any rude "rube" can be a sports hero because all it takes is a combination of luck, quick reflexes and Spartan-like stamina. Why has Robinson, though, been continually embraced with a personal warmth and admiration by a city, state and nation that has put him on a pedestal and kept him there?

He, of course, was endowed with the magic hands of a Houdini when he played third base for the Baltimore Orioles during 20 spectacular seasons. A symphony unto himself with a grace and beauty that has never been seen before or since.

He's now being officially enshrined with full honors and documentation, among the game's sainted elite at the Baseball Hall of Fame.

The late Frank "Home Run" Baker, a member of the Hall of Fame, had either seen or played against the likes of Harold "Pie" Traynor, Jumpin' Joe Dugan and Jimmy Collins.

Before he died, Baker told this reporter during an interview at his Trappe, Md., home that Robinson, most emphatically, was the best. "I always gave the edge to Jimmy Collins, who was as great with the bat as he was with the glove, but, in all fairness, I have to put Brooks at the head of the class. There isn't a play he can't make."

Such professional tributes are merited by dint of physical performance and substantiated in the record book but, in the overall assessment of a man's worth, what does it mean?

Where Robinson separates himself from the rest of the athletic achievers is in the sensitivity and sincerity of his ways and the courteous manner that is such an obvious mirror of his personality.

He had the exquisite good fortune to be raised in a warm home environment, where old-fashioned standards of politeness and respect for others were considered essential. Brooks Robinson, at age 18, left his native Little Rock on June 1, 1955, to join the Baltimore Orioles. He was in pursuit of excellence and, to his credit, never changed after he found it.

All the gross profanity that is heard in the barracks-like atmosphere of the locker room bounced off him.

Other players, sometimes envious of his popularity, believed he got the benefit of the doubt on debatable scoring decisions.

It was Ed Hurley, a hard-bitten former American League umpire, who was responsible for the most classic quotation ever uttered about Robinson. "He plays third base like he came down from a higher league," Hurley said. And, indeed, it was no exaggeration.

His accomplishments on the field were there for all to see but the true good of the individual was exemplified in the way he carried himself and treated others. It was on a porch of the Otesaga Hotel in Cooperstown, N.Y., in 1967 that we sat and talked with Charley "Red" Ruffing, the former New York Yankee pitcher, who was being enshrined that afternoon in the Hall of Fame.

"Let me tell you about that boy Brooks Robinson who plays for the Orioles," he said. "Just a few weeks ago, I was invited with Lloyd Waner to attend the All-Star Game in Anaheim, Calif., to make an appearance as the newly elected Hall of Famers.

"We kind of felt out of place. The modern players were being introduced and ran by us without saying a word. They had important things to think about. But one player did come over. It was Brooks Robinson. I didn't know him, but he put out his hand and said, 'Gee, Red, I'm happy you and Lloyd are going in the Hall of Fame.'

"You have no idea what a thrill it was for us two old-timers to be greeted that way. But Brooks was the only one thoughtful enough to do it."

Incidents of Robinson's willingness to help others blend into an almost unending story, a montage of recollections worth keeping in anyone's personal memory book. There was a time in Baltimore when Mary Dobkin, a woman who has devoted her life to helping children, was being honored at the Eastwind. Robinson was listed to be there, on the Sunday following Thanksgiving, but had taken his wife and children to visit his parents in Little Rock.

Making travel arrangements was difficult during the holiday weekend and he could only get to Baltimore by way of Washington National Airport. He wasn't able to make a plane connection from there so he rented a car, made it to the gathering on time and then retraced the route back to Little Rock so he could rejoin his family and see them safely back to Baltimore . . . all at his own expense.

On another occasion, at an Optimist Club awards presentation in the hall of the Immaculate Heart of Mary, he was to be the main speaker. But his wife was out of town visiting her sister and this meant that 4-year-old Dianna was in his charge.

So Brooks combed her hair, picked out a frilly dress and fastened the patent leather shoes. The Robinsons, father and daughter, came through the door and applause erupted as he held the child by a hand and walked to the speaker's platform where she sat comfortably next to him. It was, indeed, a different form of "baby sitting" than had ever been seen before.

In 1966, he heeded the call to make an appearance in Vietnam during the conflict to help boost the morale of U.S. forces. As he made the rounds of the various units and hospitals, he constantly asked if any men were from the Baltimore area.

George Henderson, a former business partner with Robinson for 10 years, says he saw him "respond with compassion and attention to things you wouldn't believe." It wasn't that Brooks was trying to create an "image," not that at all, but rather he was reacting as the kind and gentle individual his parents wanted him to be.

Brooks Robinson personifies not only the highest of baseball capabilities. More importantly, he elevates humanity to an exemplary level of respect and is, indeed, worthy of personal emulation . . . which is the richest tribute any individual can pay to another.●

EDUCATION IN THE UNITED STATES

● Mr. CHAFEE. Mr. President, the Secretary of Education is conducting a series of 12 regional forums in order to encourage public comment on the recommendations of the National Commission on Excellence in Education, issued this past April. The most recent of these sessions was held in Portland, Maine, last Friday, July 29, 1983.

When Secretary Bell appointed the commission in 1981, few of us could envision the tremendous impact which its work would have on our national education policy. "A Nation at Risk," the Commission report, will not languish on the shelf collecting dust like many Government documents. In assessing the shortcomings of education in the United States and recommending steps for improvement, the report has helped to catapult education to the forefront of our national consciousness more prominently than at

any other time in the past two decades.

The report provides a sobering analysis of our problems in education as well as a positive blueprint for change. Although there will be disagreement about some of the report's conclusions, there can be little question that it has effectively enabled us to focus on where we are and where we should be headed in education today. The commission report does not profess to be the final word but rather a starting point for efforts to improve schools in America.

The report has contributed to a greater public awareness about the critical connection between educational quality and our Nation's economic competitiveness. The scheduling of these forums has helped keep the report high on the national agenda and has spurred intense discussions at the State and local levels about what can and should be done to bolster the quality of instruction in our schools. By bringing together teachers, students, school administrators, school board members, State officials, and others to assess the report's findings, the forums have also demonstrated that few simple solutions exist.

Nearly 1,000 participants from New York, Connecticut, Rhode Island, Vermont, New Hampshire, Massachusetts, and Maine attended the Portland forum. Panelists representing a cross section of the education community engaged in thoughtful and wide-ranging discussions geared toward identifying and eliminating obstacles to the implementation of the Commission's recommendations. Secretary Bell and members of the Commission also fielded questions and listened to a variety of comments from forum participants.

While challenging certain of the Commission's assumptions, most of the participants expressed support for the thrust of the recommendations and indicated that State and local efforts are already underway to begin their implementation. Governments throughout the Northeast have begun to explore programs to improve curriculum, toughen graduation requirements, increase teacher salaries, institute more rigorous teacher certification and evaluation techniques, and encourage greater parental involvement in the education process.

Participants at the forum agreed that our education problems are by no means insurmountable and that, although Federal leadership and support remain important, change can and should originate at the local and State level. I am confident that these efforts will continue in the Northeast and throughout the United States, and I believe Governors and municipal officials should be encouraged to arrange forums of this nature on a State, city or townwide basis.

We must keep the momentum going by recognizing that, just as the consequences of our educational shortcomings extend far beyond the classroom, so do the solutions to our problems. The quality of education affects all of us. The burden of improving our schools does not rest solely on teachers and school administrators. It must be shared by parents, students, business, and civic leaders—indeed by every member of the community. Such forums could help to place this joint responsibility in perspective and encourage a worthwhile assessment of the strengths and weaknesses of our schools.

I would like to express my deep appreciation to those who took the time to attend last week's session, and particularly to the panelists who shared their views on various aspects of the commission report. I ask that the names of these speakers be printed in the RECORD.

The names follow:

Secretary T. H. Bell and members of the National Commission on Excellence in Education:

Emeral A. Crosby, Norman C. Francis, Shirley Gordon, and Richard Wallace.

James A. Banks, Sr., Chairman, Portland School Board.

Joseph E. Brennan, Governor of Maine.

Robert L. Brunelle, Commissioner, New Hampshire Department of Education.

Sharon M. Knickle, President, Rhode Island State PTA.

Vance R. Kelly, Chairman, New Hampshire Senate Education Committee.

Robert F. Eagen, President, Connecticut Education Association.

Viola L. Luginbuhl, Chairman, Vermont State Board of Education.

Bennett D. Katz, Chairman, Maine's Congressional Citizen's Advisory Education Committee.

Governor Lamar Alexander (Tennessee).

Governor John Carlin (Kansas).

Governor Richard A. Snelling (Vermont).

Alan O. Dann, Member, Amity Regional Board of Education, Amity, Connecticut.

Lee Hay, National Teacher of the Year, Manchester, Connecticut.

Peter R. Greer, Superintendent, Portland Schools.

Donald A. Migliori, President, Rhode Island Association of Student Councils.

Joyce W. Rogers, Member, Portland School Board and Member Executive Committee, National School Boards Association.

Glenn A. Yankee, Principal, Hazen Union High School, Hardwick, Vermont.

Richard E. Bjork, Chancellor, Vermont State Colleges.

Howard H. Dana, Trustee of Westbrook College and Portland School of Art.

Emlyn I. Griffith, Member, New York State Board of Regents and Chairman, Regents' Committee on Elementary, Secondary and Continuing Education.

John C. Hoy, President, New England Board of Higher Education.

Thomas P. Melady, President, Sacred Heart University, Bridgeport, Connecticut.

Richard W. Redmond, Acting Commissioner, Maine Department of Education.●

CLINCH RIVER BREEDER REACTOR

● Mr. HART. Mr. President, the Washington Post recently ran an editorial commenting on the administration's new Clinch River Breeder Reactor financing proposal. The editorial clearly points out the futility of subsidizing private investments in the project and the misrepresentation labeling such subsidies free-market investment opportunities involves.

The administration has proposed to provide Federal tax incentives, guaranteed performance levels, guaranteed prices, and demand for electricity to encourage investments in bonds to complete the Clinch River Breeder Reactor. It can call these subsidies "investment incentives" if it likes, but the fact remains that the new financing proposal is yet another massive Federal subsidy for the nuclear power industry. It is unconscionable for the administration to contemplate subsidies worth billions of dollars for the Clinch River Breeder Reactor, distorting the energy market place and enriching private investors at the expense of the American taxpayers.

Mr. President, I will continue to do all I can to kill the Clinch River Breeder Reactor. I ask that "Double Standard at Clinch River" be reprinted in the RECORD.

The editorial follows:

[From the Washington Post, July 20, 1983]

DOUBLE STANDARD AT CLINCH RIVER?

The Clinch River breeder reactor is the great exception to the Reagan administration's rule against energy subsidies. The White House has never subjected the breeder to the same standards that it has applied elsewhere. Another attempt to rescue the breeder is now taking shape, and once again it requires an exemption to all the Reagan stricture against public spending and lending.

Congress refused any appropriation this year for Clinch River declaring that there will be no more federal money until and unless somebody comes up with an acceptable plan for a larger share of private money. Part of the electric power industry has now come up with a proposal. The private money would be mainly in the form of loans guaranteed by the federal government. But guaranteed loans are not everybody's idea of a private contribution.

To complete the breeder reactor would, according to the Energy Department, take a further six years and $2.4 billion. The current financing plan comes from the Breeder Reactor Corp., which represents a group of utilities supporting the Clinch River project. This plan proposes that the utilities contribute another $150 million in equity, and the government put up $1.5 billion. The remainder would be raised by the guaranteed bonds, to be paid off by the breeder's power sales.

One obvious difficulty is in the utilities' contributions. State regulators are not visibly enthusiastic about allowing the utilities to pass the on to customers in their power rates.

As for the bonds Sen. Gordon Humphrey points out that the arithmetic of repay-

ments depends on some cost estimates that seem low and a predicted price for breeder power sales that looks remarkably high. The idea of the bonds arrives in a season when there seems to be rising concern both in Congress and in the administration over the scale of federal lending, and over the use of loans to circumvent the restrictions of a tight budget. It's a bad practice. Why make an exception for Clinch River?

The breeder reactor has only one justification. It gets more energy out of a uranium atom, by recycling it, than the present commercial reactors do. The Clinch River breeder was conceived at a time when it looked as though a uranium shortage lay ahead. But with new uranium discoveries, the economic case for the Clinch River breeder has evaporated at just about the same rate at which the construction cost estimates have been rising.

The immediate question is whether the White House will support this current financing plan with its $1.5 billion appropriation and its bond guarantees. If it applies the same standards to the Clinch River breeder that it applies to all the other energy technologies, the question will answer itself.●

DAIRY SALE TO EGYPT

● Mr. HELMS. Mr. President, earlier today, Secretary Block announced the sale of 28,000 metric tons of surplus dairy products to Egypt. By making this sale, the Reagan administration has taken an important step toward convincing the Europeans of the seriousness with which we deem their agricultural subsidies. Furthermore, in concluding this transaction, the administration is taking action consistent with the Senate Agriculture Committee's trade bill, S. 822. The Agriculture Committee and the administration believe that overseas sale of surplus dairy products are necessary if we are to make world agricultural trade more free and fair.

Freedom and fairness in trade have been hallmarks of U.S. trade policy. While it is not likely that there will ever be a completely free trading system in the world, it is realistic to expect free trade to be a guiding principle for all nations.

However, over the past few years, we have seen this principle become less and less a part of a number of other nations' agricultural trade policies. Rather we have seen the EEC lead an expansion in the use of export subsidies which are aimed at stealing markets traditionally held by America's farmers.

While our farmers are facing the second consecutive year of declining exports, farmers in the European Economic Community have watched their markets continually expand. The dramatic growth in the Community's farm exports is closely correlated with continuing export subsidies. In 1976, the EEC exported $12 billion of agricultural commodities, using approximately $2 billion in direct export subsidies. In 1982, the EEC exported nearly $30 billion of agricultural commodities to non-EEC members using nearly $8 billion in direct export subsidies.

In spite of the difficulties which these subsidies have been inflicting on our farm economy, and in spite of U.S. efforts to resolve the issue of export subsidies, the Europeans have refused to take our concerns seriously. At the GATT Ministerial in Geneva last November, the EEC was successful in blocking a concerted effort on the part of a number of nations to resolve the issue of agricultural export subsidies. Just recently, U.S. negotiators ended 6 months of intensive talks with representatives of the Community which produced absolutely no satisfactory results; only an agreement to continue discussions.

In fact, the Community in some instances has moved to increase, not reduce its subsidies. Effective April 30, export subsidies for dairy products were hiked sharply: 18 percent for nonfat day milk, and nearly 11 percent for butter. To make matters worse, the EEC continues to encourage production of dairy products, even though their surplus problem is worse than ours. In spite of the fact that January 1983 production in the Community was up 10 percent from the previous January, they recently increased their target price by 2.33 percent. This follows a similar hike of 10.5 percent last year.

Considering the attitude of the Europeans, it is apparent that the United States needs to do more than just talk. The Eygptian dairy sale is a good example of what needs to be done. Dairy exports are uniquely important to the Community, and competing head-to-head with them on this commodity will go far to gain their attention.

Few industries have been so effectively shutout of the world market because of other countries' subsidies as has the American dairy industry. Although our dairy industry is the largest in the free world, the United States is not a major factor in the international market for dairy products. Our absence from this market has much to do with our failure to compete for an equitable share of the world market on an equal basis with other exporting nations, primarily those of the European Economic Community.

Through the use of export subsidies, the Community has taken a share of the world market well out of proportion to their overall share of world production. Even though U.S. price supports are at a level comparable to the EEC—$413.10 per cwt. versus $12.81, respectively—and U.S. production is nearly 50 percent of the total production of the member nations of the EEC combined, our share of the world market is but one-sixth of the share held by the EEC.

The Europeans are sensitive about competition with their dairy trade because they spend so much money encouraging production of milk. Milk accounts for one-fifth of all agricultural production in the Community, with one out of every three farms engaged in dairying. As a result, dairy subsidies reportedly account for about 30 percent of the entire budget of the Common Market. It is anybody's guess how large this expenditure would be if the Community could not rely on the world market as a place to dump vast amounts of surplus dairy products.

By selling surplus dairy products to a traditional market of the EEC, we are starting to make the Community feel the impact in its wallet. This sale will set a precedent, and now the Europeans will no doubt wonder how much of the remaining 2.6 billion pounds of CCC-owned dairy product will follow into the comparatively small world dairy market. They know as well as we do that only three things can be done with this surplus: It can be given away, thrown away, or sold overseas. What the Europeans had not known—until today—was that we are willing to sell on the world market if progress is not made toward eliminating the export subsidy mentality which so thoroughly pervades their trade policy.

An awareness is growing in the United States that the loss of agricultural exports due to predatory trade practices is more than just a farm problem, it is a major economic problem which touches the lives of all Americans. The predatory nations should take note that support for actions such as this dairy sale is not only widespread but building.

Last year, I was successful in getting an amendment attached to the Omnibus Budget Reconciliation Act which provides for $175 to $190 million for use by the Commodity Credit Corporation for export promotion. Approximately $100 million of this money has already been used in the highly successful "blended credit" program.

Earlier this year, the Senate Committee on Agriculture, Nutrition, and Forestry reported out S. 822—the Agricultural Export Equity and Market Expansion Act of 1983. Included in this legislation is a mandated dairy sale, and a requirement that the remaining $90 million of the aforementioned promotion money be used for exports of high value or value added products, of which $20 million is earmarked for eggs and poultry. The bill also includes authorization for an export PIK, and expanded authorities for overseas donations of U.S. agricultural commodities.

In June, the Senate took another major step in its fight to make world agriculture trade more free when it passed overwhelmingly, 81 to 13, an

amendment I offered to S. 695, the bill to increase the U.S. quota to the IMF. The amendment is designed to deny International Monetary Fund moneys to nations which use "predatory export subsidies." Specifically, under the amendment, the U.S. Executive Director to the IMF is directed to seek adoption of a rule by the Fund that would require countries receiving loans to eliminate predatory agricultural export subsidies.

Not long after adoption of my amendment, the Senate approved an amendment to the 1984 agricultural appropriations bill offered by our colleague from Georgia, Senator MACK MATTINGLY, which will require that a minimum of $5 million in funds or commodities be spent to counter the unfair trading practices of other countries. About the same time, the Agriculture Committee reported H.R. 2733 to the Senate. This bill contains provisions mandating the Secretary of Agriculture to spend $300 million in fiscal year 1984 and 1985 for export activities.

In a move that further indicates the desire of the Senate to go toe to toe with the subsidizing nations, considerable interest has been expressed as of late toward helping the beleaguered egg and poultry industry in the world market. Earlier this month, I joined with 10 other Senators in writing President Reagan to ask him to take active measures to combat the excessive use of export subsidies for eggs used by the EEC and other countries. Senator MATTINGLY followed up on this effort by getting over 70 of our colleagues—myself included—to join him in sending a letter to the President urging him to take immediate action to counter the unfair trading practices with which our poultry and egg producers now must contend.

All of this activity should make it clear that this body will not rest until progress is made toward the elimination of predatory export subsidies. If these recent Senate actions are a reliable guide, and if the predatory nations remain intransient on this issue, I have little doubt that, the Senate will overwhelmingly pass S. 822 when it is considered later this year.

For years now, we have talked with the subsidizing nations about their predatory trade practices. The fact that export subsidies continue, and in some cases, grow, makes it clear that more than rhetoric will be needed if we are to make world trade more free and fair. With the recent flurry of congressional activity, it is apparent that the American public does want more than just talk, it wants results. With the sale of surplus dairy products to Egypt, the administration has taken another step toward getting results by reminding our competitors, in a more forceful way, that the United States will not stand idly by and accept a permanent reduction in our agricultural base nor allow our farmers to suffer at the hand of foreign treasuries.●

SENATE TO CONVENE AT 9:30 A.M. TOMORROW

Mr. BAKER. Mr. President, on tomorrow there is an order for the Senate to convene at 9:30 a.m., is there not?

The PRESIDING OFFICER. That is correct.

ORDER FOR RECOGNITION OF SENATOR THURMOND, SENATOR PROXMIRE, SENATOR WEICKER AND SENATOR BUMPERS ON TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that on tomorrow, after the recognition of the two leaders under the standing order, that two Senators be recognized on special orders of not to exceed 15 minutes each as follows: Senators THURMOND and PROXMIRE, in that order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, it is anticipated that, after the execution of the special orders tomorrow, a period will be provided for the transaction of routine morning business.

Mr. President, I have just been notified there is a fourth request for a special order tomorrow. I ask unanimous consent that there be a special order in favor of the distinguished Senator from Connecticut (Mr. WEICKER) for not to exceed 15 minutes as the fourth in a series of special orders.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I have been advised that there is another request for a special order on tomorrow.

I ask unanimous consent that a special order be provided in favor of the Senator from Arkansas (Mr. BUMPERS) to appear in sequence and that the time will be not longer than 15 minutes in length.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. BAKER. Mr. President, I have certain items that are cleared for action by unanimous consent on this side. I would address them to the Senate and inquire of the minority leader if he is in a position to clear these items as they appear.

First, Mr. President, I would propose to indefinitely postpone two items; that is, S. 1010 and S. 1148. It would be my intention to ask the Senate to turn to the consideration of S. 1148 and pass it if S. 1010 is indefinitely postponed.

Mr. BYRD. Mr. President, I might otherwise be disposed to object, but I see the author of this bill is Mr. MELCHER. I see Mr. MELCHER is in the Chamber.

Mr. BAKER. I see what might even be considered to be an agriculture bill conference going on back there. I also note they have smiles on their faces.

Mr. DOLE. Because we have not done anything yet.

Mr. BAKER. That is because they have not done anything yet.

Mr. BYRD. There is no objection.

Mr. BAKER. I thank the minority leader.

ORDER TO INDEFINITELY POSTPONE S. 1010

Mr. BAKER. Mr. President, I ask unanimous consent that Calendar Order No. 149, S. 1010, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

USE AND DISTRIBUTION OF CERTAIN INDIAN JUDGMENT FUNDS

Mr. BAKER. Mr. President, I ask the Chair to lay before the Senate Calendar Order No. 329, S. 1148.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 1148) to provide for the use and distribution of funds awarded the Assiniboine Tribe of the Fort Belknap Indian Community, Montana, and the Assiniboine Tribe of the Fort Peck Indian Community, Montana, in docket numbered 10-81L by the United States Court of Claims, and for other purposes which had been reported from the Committee on Indian Affairs with amendments, as follows:

On page 2, line 9, strike "Community", and insert "Reservation";

On page 2, line 14, after "with", insert "planning for";

On page 2, line 17, strike "Provided", through and including line 19;

On page 3, line 3, strike "enrolee", and insert "Duly enrolled member";

On page 3, line 20, strike "Community", and insert "Reservation";

On page 3, line 21, strike "Treaty Committee", and insert "Council";

On page 3, line 22, after "with", insert "planning for";

On page 3, line 25, strike "Provided", through and including line 2 on page 4;

On page 4, line 4, strike "Community", and insert "Reservation";

On page 4, line 10, strike "who", through and including line 22, and insert the following:

(b) 30 percent of these funds and any amounts remaining after the per capita payment, shall be held in trust and invested by the Secretary for the benefit of the Assiniboine Tribe of the Fort Peck Indian Reservation and its members. The principal of the funds and the income therefrom shall be applied and used for the benefit of the Assiniboine Tribe of the Fort Peck Indian Reservation and its members in accordance with reasonable terms established by the

Fort Peck Assiniboine Council with the concurrence of the Tribal Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, and approved by the Secretary: *Provided*, That until such terms has been agreed upon, the Secretary shall fix the terms of the administration of the portion of the funds as to which there is no agreement.

On page 5, line 17, strike "43 CFR", through and including "115.4", and insert "regulations of the Secretary";

On page 5, line 24, after "per capita", insert "or family interest";

So as to make the bill read:

S. 1148

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, the funds appropriated on September 30, 1981, in accordance with section 1302 of the Supplemental Appropriation Act (31 U.S.C. 724a), in satisfaction of an award in United States Court of Claims docket numbered 10-81L, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be divided on the basis of 42.5 percent of the award funds to the Assiniboine Tribe of the Fort Belknap Indian Community and 57.5 percent of the award funds to the Assiniboine Tribe of the Fort Peck Indian Reservation and utilized for the purposes herein provided.

SEC. 2. The funds apportioned to the Assiniboine Tribe of the Fort Belknap Indian Community, Montana, less the costs incurred by the Fort Belknap Assiniboine Treaty Committee in connection with planning for the use and distribution of such funds, including costs in connection with this legislation, and related attorney fees and expenses, shall be used and distributed as follows:

(a) The Assiniboine membership roll of the Fort Belknap Indian Community shall be brought current to include all eligible members born on or prior to and living on the date of enactment of this Act. Subsequent to the preparation and approval by the Secretary of the Interior (hereinafter "Secretary") of this roll, the Secretary shall make a per capita distribution of 80 percent of the funds (in a sum as equal as possible), to each duly enrolled member. The Secretary's determination concerning eligibility to share in the per capita payment shall be final.

(b) 20 percent of these funds, and any amount remaining after the per capita payment, shall be held in trust and invested by the Secretary for the benefit of the members of the Assiniboine Tribe of the Fort Belknap Indian Community. The Treaty Committee of such Tribe, with the approval of the Secretary, shall distribute an annual family interest payment to all enrolled members of the Fort Belknap Assiniboine Tribe. All members on the Assiniboine tribal membership roll living in November 15 of each year shall be eligible for the annual interest payment. Members born after that date and living on the following November 15 shall be eligible for the next annual payment.

SEC. 3. The funds apportioned to the Assiniboine Tribe of the Fort Peck Indian Reservation, Montana, less the costs incurred by the Fort Peck Assiniboine Council in connection with planning for the use and distribution of such funds, including costs in connection with this legislation, and related attorney fees and expenses, shall be used and distributed as follows:

(a) The Assiniboine membership roll of the Fort Peck Indian Reservation, Montana, shall be brought current to include all eligible members born on or prior to and living on the date of enactment of this Act. Subsequent to the preparation and approval by the Secretary of this roll, the Secretary shall make a per capita distribution of 70 percent of the funds (in sums as equal as possible), to each enrollee.

(b) 30 percent of these funds and any amounts remaining after the per capita payment, shall be held in trust and invested by the Secretary for the benefit of the Assiniboine Tribe of the Fort Peck Indian Reservation and its members. The principal of the funds and the income therefrom shall be applied and used for the benefit of the Assiniboine Tribe of the Fort Peck Indian Reservation and its members in accordance with reasonable terms established by the Fort Peck Assiniboine Council with the concurrence of the Tribal Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, and approved by the Secretary: *Provided*, That until such terms has been agreed upon, the Secretary shall fix the terms of the administration of the portion of the funds as to which there is no agreement.

SEC. 4. The per capita shares of living competent adults shall be paid directly to them. Shares of deceased individual beneficiaries shall be determined and distributed in accordance with regulations of the Secretary.

SEC. 5. None of the funds distributed per capita or held in trust under the provisions of this Act shall be subject to Federal or State income taxes, and the per capita or family interest payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act or any Federal or federally assisted programs.

SEC. 6. The Secretary is authorized to prescribe rules and regulations to carry out the provisions of this Act, including the establishment of deadlines for filing applications for enrollment.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

Mr. BYRD. Mr. President, the Senator from Montana does not have any objection to calling up his bill, does he?

Mr. MELCHER. I thank the minority leader and majority leader. It is a very worthwhile bill, and I am happy that it is being brought up. The Assiniboine Tribe in Montana, I can tell you, will be grateful.

Mr. BYRD. I bet the chief comes to see the Senator pretty soon and brings him a headdress and a quiver full of arrows.

Mr. MELCHER. The chiefs, big and small, come to see me.

There being no objection, the Senate proceeded to consider the bill.

Mr. BAKER. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc.

The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for third reading, was read the third time, and passed as follows:

S. 1148

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, the funds appropriated on September 30, 1981, in accordance with section 1302 of the Supplemental Appropriation Act (31 U.S.C. 724a), in satisfaction of an award in United States Court of Claims docket numbered 10-81L, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be divided on the basis of 42.5 percent of the award funds to the Assiniboine Tribe of the Fort Belknap Indian Community and 57.5 percent of the award funds to the Assiniboine Tribe of the Fort Peck Indian Reservation and utilized for the purposes herein provided.

SEC. 2. The funds apportioned to the Assiniboine Tribe of the Fort Belknap Indian Community, Montana, less the costs incurred by the Fort Belknap Assiniboine Treaty Committee in connection with planning for the use and distribution of such funds, including costs in connection with this legislation, and related attorney fees and expenses, shall be used and distributed as follows:

(a) The Assiniboine membership roll of the Fort Belknap Indian Community shall be brough current to include all eligible members born on or prior to and living on the date of enactment of this Act. Subsequent to the preparation and approval by the Secretary of the Interior (hereinafter "Secretary") of this roll, the Secretary shall make a per capital distribution of 80 percent of the funds (in a sum as equal as possible), to each duly enrolled member. The Secretary's determination concerning eligibility to share in the per capita payment shall be final.

(b) 20 percent of these funds, and any amount remaining after the per capital payment, shall be held in trust and invested by the Secretary for the benefit of the members of the Assiniboine Tribe of the Fort Belknap Indian Community. The Treaty Committee of such Tribe, with the approval of the Secretary, shall distribute an annual family interest payment to all enrolled members of the Fort Belknap Assiniboine Tribe. All members of the Assiniboine tribal membership roll living on November 15 of each year shall be eligible for the annual interest payment. Members born after that date and living on the following November 15 shall be eligible for the next annual payment.

SEC. 3. The funds apportioned to the Assiniboine Tribe of the Fort Peck Indian Reservation, Montana, less the costs incurred by the Fort Peck Assiniboine Council in connection with planning for the use and distribution of such funds, including costs in connection with this legislation, and related attorney fees and expenses, shall be used and distributed as follows:

(a) The Assiniboine membership roll of the Fort Peck Indian Reservation, Montana, shall be brought current to include all eligible members born on or prior to and living on the date of enactment of this Act. Subsequent to the preparation and approval by the Secretary of this roll, the Secretary shall make a per capita distribution of 70 percent of the funds (in sums as equal as possible), to each enrollee.

(b) 30 percent of these funds and any amounts remaining after the per capita payment, shall be held in trust and invested by the Secretary for the benefit of the Assiniboine Tribe of the Fort Peck Indian Reservation and its members. The principal of the funds and the income therefrom shall be applied and used for the benefit of the Assiniboine Tribe of the Fort Peck Indian Reservation and its members in accordance with reasonable terms established by the Fort Peck Assiniboine Council with the concurrence of the Tribal Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, and approved by the Secretary: provided that until such terms has been agreed upon, the Secretary shall fix the terms of the administration of the portion of the funds as to which there is no agreement.

SEC. 4. The per capita shares of living competent adults shall be paid directly to them. Shares of deceased individual beneficiaries shall be determined and distributed in accordance with regulations of the Secretary.

SEC. 5. None of the funds distributed per capita or held in trust under the provisions of this Act shall be subject to Federal or State income taxes, and the per capita or family interest payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act or any Federal or federally assisted programs.

SEC. 6. The Secretary is authorized to prescribe rules and regulations to carry out the provisions of this Act, including the establishment of deadlines for filing applications for enrollment.

The title was amended so as to read: "A bill to provide for the use and distribution of funds awarded the Assiniboine Tribe of the Fort Belknap Indian Community, Mont., and the Assiniboine Tribe of the Fort Peck Indian Reservation, Mont., in docket numbered 10-81L by the U.S. Court of Claims, and for other purposes".

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, the next item in my folder is S. 505. It would be my intention to ask the Chair to lay that matter before the Senate if the minority leader can clear it at this time.

Mr. BYRD. That matter has been cleared, Mr. President.

Mr. BAKER. I thank the minority leader.

JULIETTE GORDON LOW FEDERAL BUILDING

Mr. BAKER. Mr. President, I ask the Chair to lay before the Senate Calendar Order No. 187, S. 505.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 505) to designate the Federal building to be constructed in Savannah, Ga., as the "Juliette Gordon Low Federal Building".

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

amendment no. 2113

Mr. BAKER. Mr. President, I send an amendment to the desk on behalf of the distinguished Senator from Georgia (Mr. MATTINGLY) and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER), on behalf of Mr. MATTINGLY and Mr. STAFFORD, proposes an amendment numbered 2113.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

After line 9, add a new section as follows:

"SEC. 2. (a) The Administrator of General Services (hereinafter referred to as the Administrator), may accept and use contributions from private individuals or organizations for the design and construction of a memorial commemorating the life and accomplishments of Juliette Gordon Low. The Administrator, in consultation with the chairman of the National Endowment for the Arts and the national President of the Girl Scouts of America, shall determine the appropriate form and location of such memorial, to be located in or around the building referred to in this Act. The memorial may include fountains, gardens, walks, stained glass windows, or other building appurtenances visible and accessible to visitors, and in harmony with the architectural and landscape design of such building. The Administrator may conduct a competition to select a designer for the memorial authorized by this section. Such competition shall be open to landscape and other architects, artists, artisans, and designers.

"(b) The Administrator shall provide maintenance for such memorial."

Mr. MATTINGLY. Mr. President, in February of this year I introduced legislation to designate the Federal office building to be constructed in Telfair Square, Savannah, Ga., as the "Juliette Gordon Low Federal Building." I am pleased that the Committee on Environment and Public Works agreed with me that it was appropriate to recognize Juliette Gordon Low's contributions to our Nation's history in such a way. The bill, S. 505, was reported to the full Senate in May and has been placed on the calendar.

Today I am submitting an amendment to S. 505. It's purpose is simple. My amendment would allow for the construction of a memorial commemorating the life and accomplishments of Juliette Low in or around the Federal building which will bear her name. The design and location of the memorial, which must be in harmony with the architectural and landscape design of the building, would be determined by the Administrator of General Services in consultation with the Chairman of the National Endowment for the Arts and the national president of the Girl Scouts of America.

Under the provisions of my amendment, the memorial would be constructed without cost to the Federal Government. The Administator of General Services would be allowed to accept contributions from private individuals and organizations for this purpose. In addition, he would be authorized to conduct an open competition among artists, artisans and architects to select a designer for this memorial.

When Juliette Gordon Low died in 1927, less than 15 years after she founded the Girl Scouts of America, membership in the organization numbered 137,000. Today, that number continues to grow. Over 44,000,000 women and girls have participated in what remains the world's largest voluntary organization for girls. It is fitting, Mr. President, that the citizens of this Nation who have been influenced by Juliette Low's high principles and ideals should have the opportunity to participate in a project to honor her. It is also appropriate that such a memorial be made available for the public's enjoyment. I urge my colleagues to support this amendment to pay tribute to one Georgia's and the Nation's finest citizens.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2113) was agreed to.

The PRESIDING OFFICER. The bill is open for further amendment. If there be no further amendments to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for third reading, was read the third time, and passed, as follows:

S. 505

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal building to be constructed at Telfair Square, Savannah, Georgia, shall hereafter be named and designated as the "Juliette Gordon Low Federal Building". Any reference in a law, map, regulation, document, record, or other paper of the United States to such building shall be held to be a reference to the "Juliette Gordon Low Federal Building".

SEC. 2. (a) The Administrator of General Services (hereinafter referred to as the Administrator), may accept and use contributions from private individuals or organizations for the design and construction of a memorial commemorating the life and accomplishments of Juliette Gordon Low. The Administrator, in consultation with the chairman of the National Endowment for the Arts and the national President of the Girl Scouts of America, shall determine the appropriate form and location of such memorial, to be located in or around the building referred to in this Act. The memorial

may include fountains, gardens, walks, stained glass windows, or other building appurtenances visible and accessible to visitors, and in harmony with the architectural and landscape design of such building. The Administrator may conduct a competition to select a designer for the memorial authorized by this section. Such competition shall be open to landscape and other architects, artists, artisans, and designers.

(b) The Administrator shall provide maintenance for such memorial.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THREE ADDITIONAL ASSISTANT ADMINISTRATORS OF THE ENVIRONMENTAL PROTECTION AGENCY

Mr. BAKER. Mr. President, next on my list is S. 1696. Would the minority leader indicate to me whether he can clear that measure at this time?

Mr. BYRD. That has been cleared on this side.

Mr. BAKER. I thank the minority leader.

Mr. President, I ask that the Chair lay before the Senate Calendar Order No. 319.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1696) authorizing three additional assistant administrators of the Environmental Protection Agency.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2114

Mr. BAKER. Mr. President, I send an amendment to the desk in the nature of a substitute on behalf of the distinguished Senator from Vermont (Mr. STAFFORD).

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER), for Mr. STAFFORD, proposes an amendment numbered 2114.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) the President, by and with the advice and consent of the Senate, may appoint three Assistant Administrators of the Environmental Protection Agency in addition to—

(1) the five Assistant Administrators provided for in section 1(d) of Reorganization Plan No. 3 of 1970 (5 U.S.C. Appendix) (hereinafter in this Act referred to as the "Reorganization Plan");

(2) the Assistant Administrator provided by section 26(g) of the Toxic Substances Control Act (15 U.S.C. 2625(g)); and

(3) the Assistant Administrator provided by section 307(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 6911a).

(b) Each Assistant Administrator appointed under subsection (a) shall perform such duties as the Administrator of the Environmental Protection Agency may prescribe.

SEC. 2. (a)(1) Section 5313 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"Administrator of the Environmental Protection Agency.".

(2) The second sentence of section 1(b) of the Reorganization Plan is amended by striking out ", and shall be compensated at the rate now or hereafter provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313)".

(b)(1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"Deputy Administrator of the Environmental Protection Agency.".

(2) The first sentence of section 1(c) of the Reorganization Plan is amended by striking out ", and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314)".

(c)(1) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new items:

"Assistant Administrator for Toxic Substances, Environmental Protection Agency.

"Assistant Administrator, Office of Solid Waste, Environmental Protection Agency.

"Assistant Administrators, Environmental Protection Agency (8).".

(2)(A) Section 26(g)(2) of the Toxic Substances Control Act is amended by striking out "(A)" and ", and (B) be compensated at the rate of pay authorized for such Assistant Administrators".

(B) Section 307(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking out ", and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5, United States Code".

(C) Section 1(d) of the Reorganization Plan is amended by striking out ", and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2114) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill (S. 1696) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1696

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the President, by and with the advice and consent of the Senate, may appoint three Assistant Administrators of the Environmental Protection Agency in addition to—

(1) the five Assistant Administrators provided for in section 1(d) of Reorganization Plan No. 3 of 1970 (5 U.S.C. Appendix) (hereinafter in this Act referred to as the "Reorganization Plan");

(2) the Assistant Administrator provided by section 26(g) of the Toxic Substances Control Act (15 U.S.C. 2625(g)); and

(3) the Assistant Administrator provided by section 307(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 6911a).

(b) Each Assistant Administrator appointed under subsection (a) shall perform such duties as the Administrator of the Environmental Protection Agency may prescribe

SEC. 2. (a)(1) Section 5313 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"Administrator of the Environmental Protection Agency.".

(2) The second sentence of section 1(b) of the Reorganization Plan is amended by striking out ", and shall be compensated at the rate now or hereafter provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313)".

(b)(1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"Deputy Administrator of the Environmental Protection Agency.".

(2) The first sentence of section 1(c) of the Reorganization Plan is amended by striking out ", and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314)".

(c)(1) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new items:

"Assistant Administrator for Toxic Substances, Environmental Protection Agency.

"Assistant Administrator, Office of Solid Waste, Environmental Protection Agency.

"Assistant Administrators, Environmental Protection Agency (8).".

(2)(A) Section 26(g)(2) of the Toxic Substances Control Act is amended by striking out "(A)" and ", and (B) by compensated at the rate of pay authorized for such Assistant Administrators".

(B) Section 307(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by striking out ", and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5, United States Code".

(C) Section 1(d) of the Reorganization Plan is amended by striking out ", and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315)".

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT OF D.C. RETIREMENT REFORM ACT

Mr. BAKER. Mr. President, I am now prepared to go to S. 1625, if the minority leader can clear that.

Mr. BYRD. Mr. President, I am happy to say to the majority leader that that item has been cleared on this side.

Mr. BAKER. I thank the minority leader.

I ask that the Chair lay before the Senate Calendar Order No. 335, S. 1625.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1625) to amend the District of Columbia Retirement Reform Act.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs with amendments, as follows:

On page 5, line 14, after "Agency", insert "and the Comptroller General";

On page 6, line 4, strike "determine", through and including "section." on line 12, and insert the following: "provide the Board its assessment within 60 days of receipt of the Board's report, of the scope, nature, involvement, and impact on District of Columbia police officers and firefighters of the events determined by the Board to be of unordinary and of a catastrophic nature. The Agency shall submit copies of its assessment to the Comptroller General, the Board, and the offices and officers set forth in subsection (b) of this section.".

On page 6, line 21, strike "report", and insert "reports".

So as to make the bill read:

S. 1625

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 145 of the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. *866,* 882-884), is amended to read as follows:

"(a)(1) After January 1, and before March 1, of each year beginning with calendar year 1984 and ending with calendar year 2004, the enrolled actuary engaged pursuant to section 142 shall, with respect to the District of Columbia Police Officers and Fire Fighters' Retirement Fund—

"(A) determine, in accordance with paragraph (2) of this subsection, the disability retirement rate for the preceding calendar year; and

"(B) determine if such disability retirement rate for such preceding calendar year is greater than eight-tenths of a percentage point.

"(2) For the purposes of clause (A) of paragraph (1) of this subsection, the disability retirement rate for the applicable calendar year shall be an amount equal to a fraction, the numerator of which is the number of officers and members of the Metropolitan Police Force and the Fire Department of the District of Columbia who first became officers or members on or before February 14, 1980, and who retired on disability during such applicable year under subsection (f)(1) or (g)(1) of section 12 of the Police and Firemen's Retirement and Disability Act (but such numerator shall not include any such officer or member whose retirement is ordered by a court of competent jurisdiction), and the denominator of which is the total number of such officers and members who were on active duty on January 1 of such applicable calendar year.

"(3) The enrolled actuary shall report the determinations (including related documents and information) made under paragraph (1) of this subsection to the Board and to the Comptroller General of the United States not later than March 1 of each year.

"(b)(1) The Board and the Comptroller General shall each transmit a copy of each such report by the enrolled actuary under subsection (a) to the Speaker of the House of Representatives, the President pro tempore of the Senate, the chairman of the Committee on Governmental Affairs of the Senate, the chairman of the Committee on the District of Columbia of the House of Representatives, the chairman of the Committee on Appropriations of the Senate, the chairman of the Committee on Appropriations of the House of Representatives, the Mayor of the District of Columbia, and the Council of the District of Columbia, not later than March 31 of the calendar year in which the report is made, and each shall submit comments on such report.

"(2) The Comptroller General shall include in his comments on each such report transmitted under paragraph (1) of this subsection a statement as to whether or not the determinations made by the enrolled actuary fairly present, in all material respects, the requirements of subsection (a) of this section.

"(3) With respect to each applicable fiscal year, the Comptroller General shall make a determination, as provided for under subsection (c)(1) of this section of the amount, if any, by which the authorization under section 144(a)(1) should be reduced. The results of such determination, together with such other data, information, and comments as the Comptroller General may deem necessary to enable the Congress, and the appropriate committees thereof, to carry out the provisions of subsection (c) of this section, shall be included as a part of his report under paragraph (1) of this subsection.

"(c)(1) Notwithstanding any other provision of this Act, with respect to the fiscal year commencing October 1, 1984, and each fiscal year thereafter through the fiscal year commencing October 1, 2004, the authorization under section 144(a)(1) for each such fiscal year shall be deemed, for purposes of such section, to be reduced in the amount hereafter provided, if the report, submitted by the Comptroller General pursuant to subsection (b) of this section in the calendar year in which such fiscal year commences, states that the disability retirement rate under subsection (a) of this section for the preceding calendar year is greater than eight-tenths of a percentage point. The amount of such reduction shall be 1½ per centum for each whole tenth of a percentage point by which the disability retirement rate is greater than eight-tenths of a percentage point.

"(2) There shall be no reduction pursuant to section 144(a)(1) and paragraph (1) of this subsection for any such fiscal year, if, in computing the disability retirement rate under subsection (a) of this section for the calendar year preceding the calendar year in which such fiscal year commences, the numerator is less than eight.

"(3)(A) If the Board determines, on the basis of substantial facts, that unordinary circumstances or events of catastrophic magnitude, such as a fire or civil disorder, caused or significantly contributed to the number of disability retirements under subsection (g)(1) of section 12 of the Policemen and Firemen's Retirement and Disability Act during a calendar year covered by the report submitted by the Comptroller General pursuant to subsection (b) of this section, it shall submit a detailed statement on such circumstances and events to the Federal Emergency Management Agency and the Comptroller General. Such statement shall be submitted on or before July 1 of the calendar year next following the calendar year covered by such report of the Comptroller General. The statement shall contain, among other matters, data on the total number of disability retirements under subsections (f)(1) and (g)(1) of section 12 of such Act for the applicable calendar year, the number of such retirements under subsection (g)(1) of such Act which, in the opinion of the Board, were caused or significantly contributed to by such circumstances or events, and an explanations as to why the Board considers such events or circumstances to be unordinary and of a catastrophic magnitude.

"(B) The Federal Emergency Management Agency shall review the Board's report and provide the Board its assessment within 60 days of receipt of the Board's report, of the scope, nature, involvement, and impact on District of Columbia police officers and firefighters of the events determined by the Board to be of unordinary and of a catastrophic nature. The Agency shall submit copies of its assessment to the Comptroller General, the Board, and the offices and officers set forth in subsection (b) of this section.

"(C)(1) The Comptroller General, on the basis of such reports from the Board and the Federal Emergency Management Agency, shall determine the extent to which such disability retirements which such Agency determined were caused or contributed to by such events and circumstances, caused a reduction in the amount appropriated to the Fund as provided under subsection (c) of this section. The Comptroller General shall report the amount of such reduction so caused to the Board and to the offices and officers set forth in subsection (b)(1) of this section. Such reports shall be submitted on or before December 31 of the calendar year in which he receives such report of the Federal Emergency Management Agency.

"(2) In addition to the amount authorized to be appropriated to the Fund for any fiscal year under section 144(a)(1), there is authorized to be appropriated such sum as may be necessary to pay to the Fund an amount equal to the amount of any reduction, plus interest lost to the Fund because of the reduction, for a fiscal year as reported by the Comptroller General to the offices and officers of the Congress pursuant to paragraph (1) of this subsection, but in no case shall any moneys be appropriated on the basis of the authorization pursuant to this paragraph except to the extent that any such reduction was actually made.".

SEC. 2. The amendment made by this Act shall be considered as having taken effect as of January 1, 1983.

Mr. BAKER. Mr. President, I ask unanimous consent that the amend-

ments be considered and agreed to en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered. Without objection, the amendments are agreed to en bloc.

AMENDMENT NO. 2115

Mr. BAKER. Now, Mr. President, I send to the desk an amendment on behalf of the distinguished Senator from Maryland (Mr. MATHIAS) and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER), for Mr. MATHIAS, proposes an amendment numbered 2115. On page 7, line 1, after the word "appropriated" add: "for the fiscal year commencing October 1, 1984, and each fiscal year thereafter,"

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2115) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill (S. 1625) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1625

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 145 of the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866, 882-884), is amended to read as follows:

"(a)(1) After January 1, and before March 1, of each year beginning with calendar year 1984 and ending with calendar year 2004, the enrolled actuary engaged pursuant to section 142 shall, with respect to the District of Columbia Police Officers and Fire Fighters' Retirement Fund—

"(A) determine, in accordance with paragraph (2) of this subsection, the disability retirement rate for the preceding calendar year; and

"(B) determine if such disability retirement rate for such preceding calendar year is greater than eight-tenths of a percentage point.

"(2) For the purposes of clause (A) of paragraph (1) of this subsection, the disability retirement rate for the applicable calendar year shall be an amount equal to a fraction, the numerator of which is the number of officers and members of the Metropolitan Police Force and the Fire Department of the District of Columbia who first became officers or members on or before February 14, 1980, and who retired on disability during such applicable year under subsection (f)(1) or (g)(1) of section 12 of the Policemen and Firemen's Retirement and Disability Act (but such numerator shall not include any such officer or member whose retirement is ordered by a court of competent jurisdiction), and the denominator of which is the total number of such officers and members who were on active duty on January 1 of such applicable calendar year.

"(3) The enrolled actuary shall report the determinations (including related documents and information) made under paragraph (1) of this subsection to the Board and to the Comptroller General of the United States not later than March 1 of each year.

"(b)(1) The Board and the Comptroller General shall each transmit a copy of each such report by the enrolled actuary under subsection (a) to the Speaker of the House of Representatives, the President pro tempore of the Senate, the chairman of the Committee on Governmental Affairs of the Senate, the chairman of the Committee on the District of Columbia of the House of Representatives, the chairman of the Committee on Appropriations of the Senate, the chairman of the Committee on Appropriations of the House of Representatives, the Mayor of the District of Columbia, and the Council of the District of Columbia, not later than March 31 of the calendar year in which the report is made, and each shall submit comments on such report.

"(2) The Comptroller General shall include in his comments on each such report transmitted under paragraph (1) of this subsection a statement as to whether or not the determinations made by the enrolled actuary fairly present, in all material respects, the requirements of subsection (a) of this section.

"(3) With respect to each applicable fiscal year, the Comptroller General shall make a determination, as provided for under subsection (c)(1) of this section of the amount, if any, by which the authorization under section 144(a)(1) should be reduced. The results of such determination, together with such other data, information, and comments as the Comptroller General may deem necessary to enable the Congress, and the appropriate committees thereof, to carry out the provisions of subsection (c) of this section, shall be included as a part of his report under paragraph (1) of this subsection.

"(c)(1) Notwithstanding any other provision of this Act, with respect to the fiscal year commencing October 1, 1984, and each fiscal year thereafter through the fiscal year commencing October 1, 2004, the authorization under section 144(a)(1) for each such fiscal year shall be deemed, for purposes of such section, to be reduced in the amount hereafter provided, if the report, submitted by the Comptroller General pursuant to subsection (b) of this section in the calendar year in which such fiscal year commences, states that the disability retirement rate under subsection (a) of this section for the preceding calendar year is greater than eight-tenths of a percentage point. The amount of such reduction shall be 1½ per centum for each whole thenth of a percentage point by which the disability retirement rate is greater than eight-tenths of a percentage point.

"(2) There shall be no reduction pursuant to section 144(a)(1) and paragraph (1) of this subsection for any such fiscal year, if, in computing the disability retirement rate under subsection (a) of this section for the calendar year preceding the calendar year in which such fiscal year commences, the numerator is less than eight.

"(3)(A) If the Board determines, on the basis of substantial facts, that unordinary circumstances or events of catastrophic magnitude, such as a fire or civil disorder, caused or significantly contributed to the number of disability retirements under subsection (g)(1) of section 12 of the Policemen and Firemen's Retirement and Disability Act during a calendar year covered by the report submitted by the Comptroller General pursuant to subsection (b) of this section, it shall submit a detailed statement on such circumstances and events to the Federal Emergency Management Agency and the Comptroller General. Such statement shall be submitted on or before July 1 of the calendar year next following the calendar year covered by such report of the Comptroller General. The statement shall contain, among other matters, data on the total number of disability retirements under subsections (f)(1) and (g)(1) of section 12 of such Act for the applicable calendar year, the number of such retirements under subsection (g)(1) of such Act which, in the opinion of the Board, were caused or significantly contributed to by such circumstances or events, and an explanation as to why the Board considers such events or circumstances to be unordinary and of a catastrophic magnitude.

"(B) The Federal Emergency Management Agency shall review the Board's report and provide the Board its assessment within 60 days of receipt of the Board's report, of the scope, nature, involvement, and impact on District of Columbia police officers and firefighters of the events determined by the Board to be of unordinary and of a catastrophic nature. The Agency shall submit copies of its assessment to the Comptroller General, the Board, and the offices and officers set forth in subsection (b) of this section.

"(C)(1) The Comptroller General, on the basis of such reports from the Board and the Federal Emergency Management Agency, shall determine the extent to which such disability retirements which such Agency determined were caused or contributed to by such events and circumstances, caused a reduction in the amount appropriated to the Fund as provided under subsection (c) of this section. The Comptroller General shall report the amount of such reduction so caused to the Board and to the offices and officers set forth in subsection (b)(1) of this section. Such reports shall be submitted on or before December 31 of the calendar year in which he receives such report of the Federal Emergency Management Agency.

"(2) In addition to the amount authorized to be appropriated to the Fund for any fiscal year under section 144(a)(1), there is authorized to be appropriated for the fiscal year commencing October 1, 1984, and each fiscal year thereafter, such sum as may be necessary to pay to the Fund an amount equal to the amount of any reduction, plus interest lost to the Fund because of the reduction, for a fiscal year as reported by the Comptroller General to the offices and officers of the Congress pursuant to paragraph (1) of this subsection, but in no case shall any moneys be appropriated on the basis of the authorization pursuant to this paragraph except to the extent that any such reduction was actually made.".

SEC. 2. The amendment made by this Act shall be considered as having taken effect as of January 1, 1983.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EMERGENCY VETERANS' JOB TRAINING ACT OF 1983

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2355.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate to the bill (H.R. 2355) entitled "An Act to establish an emergency program of job training assistance for disabled veterans and veterans of the Vietnam era", with the following amendments:

In lieu of the matter proposed to be inserted by the amendment of the Senate to the text of the bill, insert:

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Emergency Veterans' Job Training Act of 1983".

TABLE OF CONTENTS

PURPOSE

SEC. 2. The purpose of this Act is to address the problem of severe and continuing unemployment among veterans by providing, in the form of payments to defray the costs of training, incentives to employers to hire and train certain wartime veterans who have been unemployed for long periods of time for stable and permanent positions that involve significant training.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Administrator" means the Administrator of Veterans' Affairs.

(2) The term "Secretary" means the Secretary of Labor.

(3) The terms "veteran", "Korean conflict", "compensation", "service-connected", "active military, naval, or air service", "State", and "Vietnam era", have the meanings given such terms in paragraphs (2), (9), (13), (16), (20), (24), and (29), respectively, of section 101 of title 38, United States Code.

ESTABLISHMENT OF PROGRAM

SEC. 4. (a) The Administrator and, to the extent specifically provided by this Act, the Secretary shall carry out a program in accordance with this Act to assist eligible veterans in obtaining employment through training for employment in stable and permanent positions that involve significant training. The program shall be carried out through payments to employers who employ and train eligible veterans in such jobs in order to assist such employers in defraying the costs of necessary training.

(b) The Secretary shall carry out the Secretary's responsibilities under this Act through the Assistant Secretary of Labor for Veterans' Employment established under section 2002A of title 38, United States Code.

ELIGIBILITY FOR PROGRAM; DURATION OF ASSISTANCE

SEC. 5. (a)(1) To be eligible for participation in a job training program under this Act, a veteran must be a Korean conflict or Vietnam-era veteran who—

(A) is unemployed at the time of applying for participation in a program under this Act; and

(B) has been unemployed for at least 15 of the 20 weeks immediately preceding the date of such veteran's application for participation in a program under this Act.

(2) For purposes of paragraph (1), the term "Korean conflict or Vietnam-era veteran" means a veteran—

(A) who served in the active military, naval, or air service for a period of more than 180 days, any part of which was during the Korean conflict or the Vietnam era; or

(B) who served in the active military, naval, or air service during the Korean conflict or the Vietnam era and—

(i) was discharged or released therefrom for a service-connected disability; or

(ii) is entitled to compensation (or but for the receipt of retirement pay would be entitled to compensation).

(3) For purposes of paragraph (1), a veteran shall be considered to be unemployed during any period the veteran is without a job and wants and is available for work.

(b)(1) A veteran who desires to participate in a program of job training under this Act shall submit to the Administrator an application for participation in such a program. Such an application—

(A) shall include a certification by the veteran that the veteran is unemployed and meets the other criteria for eligibility prescribed by subsection (a); and

(B) shall be in such form and contain such additional information as the Administrator may prescribe.

(2)(A) Subject to subparagraph (B), the Administrator shall approve an application by a veteran for participation in a program of job training under this Act unless the Administrator finds that the veteran is not eligible to participate in a program of job training under this Act.

(B) The Administrator may withhold approval of an application of a veteran under this Act if the Administrator determines that, because of limited funds available for the purpose of making payments to employers under this Act, it is necessary to limit the number of participants in programs under this Act.

(3)(A) The Administrator shall certify as eligible for participation under this Act a veteran whose application is approved under this subsection and shall furnish the veteran with a certificate of that veteran's eligibility for presentation to an employer offering a program of job training under this Act. Any such certificate shall expire 60 days after it is furnished to the veteran. The date on which a certificate is furnished to a veteran under this paragraph shall be stated on the certificate.

(B) A certificate furnished under this paragraph may, upon the veteran's application, be renewed in accordance with the terms an conditions of subparagraph (A).

(c) The maximum period of training for which assistance may be provided on behalf of a veteran under this Act is—

(1) fifteen months in the case of—

(A) a veteran with a service-connected disability rated at 30 percent or more; or

(B) a veteran with a service-connected disability rated at 10 percent or 20 percent who has been determined under section 1506 of title 38, United States Code, to have a serious employment handicap; and

(2) nine months in the case of any other veteran.

EMPLOYER JOB TRAINING PROGRAMS

SEC. 6. (a)(1) Except as provided in paragraph (2), in order to be approved as a program of job training under this Act, a program of job training of an employer approved under section 7 must provide training for a period of not less than six months in an occupation in a growth industry, in an occupation requiring the use of new technological skills, or in an occupation for which demand for labor exceeds supply.

(2) A program of job training providing training for a period of at least three but less than six months may be approved if the Administrator determines (in accordance with standards which the Administrator shall prescribe) that the purpose of this Act would be met through that program.

(b) Subject to section 10 and the other provisions of this Act, a veteran who has been approved for participation in a program of job training under this Act and has a current certificate of eligiblity for such participation may enter a program of job training that has been approved under section 7 and that is offered to the veteran by the employer.

APPROVAL OF EMPLOYER PROGRAMS

SEC. 7. (a)(1) An employer may be paid assistance under section 8a on behalf of an eligible veteran employed by such employer and participating in a program of job training offered by that employer only if the program is approved under this section and in accordance with such procedures as the Administrator may by regulation prescribe.

(2) Except as provided in subsection (b), the Administrator shall approve a proposed program of job training of an employer unless the Administrator determines that the application does not contain a certification and other information meeting the requirements established under this section or that withholding of approval is warranted under subsection (g).

(b) The Administrator may not approve a program of job training—

(1) for employment which consists of seasonal, intermittent, or temporary jobs;

(2) for employment under which commissions are the primary source of income;

(3) for employment which involves political or religious activities;

(4) for employment with any department, agency, instrumentality, or branch of the Federal Government (including the United States Postal Service and the Postal Rate Commission); or

(5) if the training will not be carried out in a State.

(c) An employer offering a program of job training that the employer desires to have approved for the purposes of this Act shall submit to the Administrator a written application for such approval. Such application

shall be in such form as the Administrator shall prescribe.

(d) An application under subsection (c) shall include a certification by the employer of the following:

(1) That the employer is planning that, upon a veteran's completion of the program of job training, the employer will employ the veteran in a position for which the veteran has been trained and that the employer expects that such a position will be available on a stable and permanent basis to the veteran at the end of the training period.

(2) That the wages and benefits to be paid to a veteran participating in the employer's program of job training will be not less than the wages and benefits normally paid to other employees participating in a comparable program of job training.

(3) That the employment of a veteran under the program—

(A) will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits); and

(B) will not be in a job (i) while any other individual is on layoff from the same or any substantially equivalent job, or (ii) the opening for which was created as a result of the employer having terminated the employment of any regular employee or otherwise having reduced its work force with the intention of hiring a veteran in such job under this Act.

(4) That the employer will not employ in the program of job training a veteran who is already qualified by training and experience for the job for which training is to be provided.

(5) That the job which is the objective of the training program is one that involves significant training.

(6) That the training content of the program is adequate, in light of the nature of the occupation for which training is to be provided and of comparable training opportunities in such occupation, to accomplish the training objective certified under clause (2) of subsection (e).

(7) That each participating veteran will be employed full time in the program of job training.

(8) That the training period under the proposed program is not longer than the training periods that employers in the community customarily require new employees to complete in order to become competent in the occupation or job for which training is to be provided.

(9) That there are in the training establishment or place of employment such space, equipment, instructional material, and instructor personnel as needed to accomplish the training objective certified under clause (2) of subsection (e).

(10) That the employer will keep records adequate to show the progress made by each veteran participating in the program and otherwise to demonstrate compliance with the requirements established under this Act.

(11) That the employer will furnish each participating veteran, before the veteran's entry into training, with a copy of the employer's certification under this subsection and will obtain and retain the veteran's signed acknowledgment of having received such certification.

(12) That the program meets such other criteria as the Administrator may determine are essential for the effective implementation of the program established by this Act.

(e) A certification under subsection (d) shall include—

(1) a statement indicationg (A) the total number of hours of participation in the program of job training to be offered a veteran, (B) the length of the program of job training, and (C) the starting rate of wages to be paid to a participant in the program; and

(2) a description of the training content of the program (including any agreement the employer has entered into with an educational institution under section 8) and of the objective of the training.

(f)(1) Except as specified in paragraph (2), each matter required to be certified to in paragraphs (1) through (11) of subsection (d) shall be considered to be a requirement established under this Act.

(2)(A) For the purposes of section 8(c), only matters required to be certified in paragraphs (1) through (10) of subsection (d) shall be so considered.

(B) For the purposes of section 11, a matter required to be certified under paragraph (12) of subsection (d) shall also be so considered.

(g) In accordance with regulations which the Administrator shall prescribe, the Administrator may withhold approval of an employer's proposed program of job training pending the outcome of an investigation under section 12 and, based on the outcome of such an investigation, may disapprove such program.

(h) For the purposes of this section, approval of a program of apprenticeship or other on-job training for the purposes of section 1787 of title 38, United States Code, shall be considered to meet all requirements established under this Act for approval of a program of job training.

PAYMENTS TO EMPLOYERS; OVERPAYMENT

SEC. 8. (a)(1) Except as provided in paragraph (3) and subsection (b) and subject to the provisions of section 9, the Administrator shall make quarterly payments to an employer of a veteran participating in an approved program of job training under this Act. Subject to section 5(c) and paragraph (2), the amount paid to an employer on behalf of a veteran for any period of time shall be 50 percent of the product of (A) the starting hourly rate of wages paid to the veteran by the employer (without regard to overtime or premium pay), and (B) the number of hours worked by the veteran during that period.

(2) The total amount that may be paid to an employer on behalf of a veteran participating in a program of job training under this Act is $10,000.

(3) In order to relieve financial burdens on business enterprises with relatively few numbers of employees, the Administrator may make payments under this Act on a monthly, rather than quarterly, basis to an employer with a number of employees less than a number which shall be specified in regulations which the Administrator shall prescribe for the purposes of this paragraph.

(b) Payment may not be made to an employer for a period of training under this Act on behalf of a veteran until the Administrator has received—

(1) from the veteran, a certification that the veteran was employed full time by the employer in a program of job training during such period; and

(2) from the employer, a certification—

(A) that the veteran was employed by the employer during that period and that the veteran's performance and progress during such period were satisfactory; and

(B) of the number of hours worked by the veteran during that period.

With respect to the first such certification by an employer with respect to a veteran, the certification shall indicate the date on which the employment of the veteran began and the starting hourly rate of wages paid to the veteran (without regard to overtime or premium pay).

(c)(1)(A) Whenever the Administrator finds that an overpayment under this Act has been made to an employer on behalf of a veteran as a result of a certification, or information contained in an application, submitted by an employer which was false in any material respect, the amount of such overpayment shall constitute a liability of the employer to the United States.

(B) Whenever the Administrator finds that an employer has failed in any substantial respect to comply for a period of time with a requirement established under this Act (unless the employer's failure is the result of false or incomplete information provided by the veteran), each amount paid to the employer on behalf of a veteran for that period shall be considered to be an overpayment under this Act, and the amount of such overpayment shall constitute a liability of the employer to the United States.

(2) Whenever the Administrator finds that an overpayment under this Act has been made to an employer on behalf of a veteran as a result of a certification by the veteran, or as a result of information provided to an employer or contained in an application submitted by the veteran, which was willfully or negligently false in any material respect, the amount of such overpayment shall constitute a liability of the veteran to the United States.

(3) Any overpayment referred to in paragraph (1) or (2) may be recovered in the same manner as any other debt due the United States. Any overpayment recovered shall be credited to funds available to make payments under this Act. If there are no such funds, any overpayment recovered shall be deposited into the Treasury.

(4) Any overpayment referred to in paragraph (1) or (2) may be waived, in whole or in part, in accordance with the terms and conditions set forth in section 3102 of title 38, United States Code.

ENTRY INTO PROGRAM OF JOB TRAINING

SEC. 9. Notwithstanding any other provision of this Act, the Administrator may withhold or deny approval of a veteran's entry into an approved program of job training if the Administrator determines that funds are not available to make payments under this Act on behalf of the veteran to the employer offering that program. Before the entry of a veteran into an approved program of job training of an employer for purposes of assistance under this Act, the employer shall notify the Administrator of the employer's intention to employ that veteran. The veteran may begin such program of job training with the employer two weeks after the notice is transmitted to the Administrator unless within that time the employer has received notice from the Administrator that approval of the veteran's entry into that program of job training must be withheld or denied in accordance with this section.

PROVISION OF TRAINING THROUGH EDUCATIONAL INSTITUTIONS

SEC. 10. An employer may enter into an agreement with an educational institution that has been approved for the enrollment of veterans under chapter 34 of title 38, United States Code, in order that such insti-

tution may provide a program of job training (or a portion of such a program) under this Act. When such an agreement has been entered into, the application of the employer under section 7 shall so state and shall include a description of the training to be provided under the agreement.

DISCONTINUANCE OF APPROVAL OF PARTICIPATION IN CERTAIN EMPLOYER PROGRAMS

SEC. 11. If the Administrator finds at any time that a program of job training previously approved by the Administrator for the purposes of this Act thereafter fails to meet any of the requirements established under this Act, the Administrator may immediately disapprove further participation by veterans in that program. The Administrator shall provide to the employer concerned, and to each veteran participating in the employer's program, a statement of the reasons for, and an opportunity for a hearing with respect to, such disapproval. The employer and each such veteran shall be notified of such disapproval, the reasons for such disapproval, and the opportunity for a hearing. Notification shall be by a certified or registered letter, and a return receipt shall be secured.

INSPECTION OF RECORDS; INVESTIGATIONS

SEC. 12. (a) The records and accounts of employers pertaining to veterans on behalf of whom assistance has been paid under this Act, as well as other records that the Administrator determines to be necessary to ascertain compliance with the requirements established under this Act, shall be available at reasonable times for examination by authorized representatives of the Federal Government.

(b) The Administrator may monitor employers and veterans participating in programs of job training under this Act to determine compliance with the requirements established under this Act.

(c) The Administrator may investigate any matter the Administrator considers necessary to determine compliance with the requirements established under this Act. The investigations authorized by this subsection may include examining records (including making certified copies of records), questioning employees, and entering into any premises or onto any site where any part of a program of job training is conducted under this Act, or where any of the records of the employer offering or providing such program are kept.

(d) The Administrator may administer functions under subsections (b) and (c) in accordance with an agreement between the Administrator and the Secretary providing for the administration of such subsections (or any portion of such subsections) by the Department of Labor. Under such an agreement, any entity of the Department of Labor specified in the agreement may administer such subsections, notwithstanding section 4(b).

COORDINATION WITH OTHER PROGRAMS

SEC. 13. (a)(1) Assistance may not be paid under this Act to an employer on behalf of a veteran for any period of time described in paragraph (2) and to such veteran under chapter 31, 32, 34, 35, or 36 of title 38, United States code, for the same period of time.

(2) A period of time referred to in paragraph (1) is the period of time beginning on the date on which the veteran enters into an approved program of job training of an employer for purposes of assistance under this Act and ending on the last date for which such assistance is payable.

(b) Assistance may not be paid under this Act to an employer on behalf of an eligible veteran for any period if the employer receives for that period any other form of assistance on account of the training or employment of the veteran, including assistance under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) or a credit under section 44B of the Internal Revenue Code of 1954 (26 U.S.C. 44B) (relating to credit for employment of certain new employees).

(c) Assistance may not be paid under this Act on behalf of a veteran who has completed a program of job training under this Act.

COUNSELING

SEC. 14. The Administrator and the Secretary may, upon request, provide employment counseling services to any veteran eligible to participate under this Act in order to assist such veteran in selecting a suitable program of job training under this Act.

INFORMATION AND OUTREACH; USE OF AGENCY RESOURCES

SEC. 15. (a)(1) The Administrator and the Secretary shall jointly provide for an outreach and public information program—

(A) to inform veterans about the employment and job training opportunities available under this Act, under chapters 31, 34, 36, 41, and 42 of title 38, United States Code, and under other provisions of law; and

(B) to inform private industry and business concerns (including small business concerns), public agencies and organizations, educational institutions, trade associations, and labor unions about the job training opportunities available under, and the advantages of participating in, the program established by this Act.

(2) The Secretary, in consultation with the Administrator, shall promote the development of employment and job training opportunities for veterans by encouraging potential employers to make programs of job training under this Act available for eligible veterans, by advising other appropriate Federal departments and agencies of the program established by this Act, and by advising employers of applicable responsibilities under chapters 41 and 42 of title 38, United States Code, with respect to veterans.

(b) The Administrator and the Secretary shall coordinate the outreach and public information program under subsection (a)(1), and job development activities under subsection (a)(2), with job counseling, placement, job development, and other services provided for under chapters 41 and 42 of title 38, United States Code, and with other similar services offered by other public agencies and organizations.

(c)(1) The Administrator and the Secretary shall make available in regional and local offices of the Veterans' Administration and the Department of Labor such personnel as are necessary to facilitate the effective implementation of this Act.

(2) In carrying out the responsibilities of the Secretary under this Act, the Secretary shall make maximum use of the services of State and Assistant State Directors for Veterans' Employment, disabled veterans' outreach program specialists, and employees of local offices appointed pursuant to sections 2003, 2003A, and 2004 of title 38, United States Code. The Secretary shall also use such resources as are available under part C of title IV of the Job Training Partnership Act (29 U.S.C. 1501 et seq.). To the extent that the Administrator withholds approval of veterans' applications under this Act pursuant to section 5(b)(2)(B), the Secretary shall take steps to assist such veterans in taking advantage of opportunities that may be available to them under title III of that Act or under any other program carried out with funds provided by the Secretary.

(d) The Secretary shall request and obtain from the Administrator of the Small Business Administration a list of small business concerns and shall, on a regular basis, update such list. Such list shall be used to identify and promote possible training and employment opportunities for veterans.

(e) The Administrator and the Secretary shall assist veterans and employers desiring to participate under this Act in making application and completing necessary certifications.

AUTHORIZATION OF APPROPRIATIONS

SEC. 16. There is authorized to be appropriated to the Veterans' Administration $150,000,000 for each of fiscal years 1984 and 1985 for the purpose of making payments to employers under this Act and for the purpose of section 18 of this Act. Amounts appropriated pursuant to this section shall remain available until September 30, 1986.

TERMINATION OF PROGRAM

SEC. 17. (a) Except as provided under subsection (b), assistance may not be paid to an employer under this Act—

(1) on behalf of a veteran who applies for a program of job training under this Act after September 30, 1984; or

(2) for any such program which begins after December 31, 1984.

(b) If funds are not both appropriated under section 16 and made available by the Director of the Office of Management and Budget to the Veterans' Administration on or before October 1, 1983, for the purpose of making payments to employers under this Act, assistance may be paid to an employer under this Act on behalf of an veteran if the veteran—

(1) applies for a program of job training under this Act within one year after the date on which funds so appropriated are made available to the Veterans' Administration by the Director; and

(2) begins participation in such program within 15 months after such date.

EXPANSION OF TARGETED DELIMITING DATE EXTENSION

SEC. 18. (a) Subject to the limitation on the availability of funds set forth in subsection (b), an associate degree program which is predominantly vocational in content may be considered by the Administrator, for the purposes of section 1662(a)(3) of title 38, United States Code, to be a course with an approved vocational objective if such degree program meets the requirements established in such title for approval of such program.

(b) Funds for the purpose of carrying out subsection (a) shall be derived only from amounts appropriated pursuant to the authorizations of appropriations in section 16. Not more than a total of $25,000,000 of amounts so appropriated for fiscal years 1984 and 1985 shall be available for that purpose.

EFFECTIVE DATE

SEC. 19. This Act shall take effect on October 1, 1983.

In lieu of the amendment of the Senate to the title of the bill, amend the title so as to read: "An Act to establish an emergency program of job training assistance for unemployed Korean conflict and Vietnam-era veterans, and for other purposes.".

Mr. BAKER. Mr. President, I ask unanimous consent that the amendments be considered and agreed to en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I am pleased to present to the Senate for its favorable consideration, H.R. 2355, the proposed Emergency Veterans' Job Training Act of 1983. This bill is designed to alleviate the critical unemployment problems which persist among veterans of the Korean conflict and the Vietnam era.

Mr. President, this bill in its present form is an amalgam of three different bills introduced this spring to establish a form of emergency job training assistance for unemployed veterans: H.R. 2355, introduced on March 24, 1983, by Congressman MARVIN LEATH, chairman of the Subcommittee on Education, Training, and Employment of the House Committee on Veterans' Affairs; S. 992, introduced on April 6, 1983, by my friend and the distinguished ranking minority member of the Senate Committee on Veterans' Affairs (Mr. CRANSTON); and S. 1033, introduced by me as chairman of the Veterans' Affairs Committee on April 12, 1983. H.R. 2355 was passed by the House on June 7, and by the Senate, with an amendment, on June 15. The Senate amendment was essentially the text of S. 1033, as reported by the Veterans' Affairs Committee on May 19, 1983. The differences between the House-passed version and the Senate-passed version of H.R. 2355 have now been resolved and embodied in a compromise agreement between the two authorizing committees. Yesterday, the full House approved the compromise agreement, as a House amendment to the Senate amendment to H.R. 2355.

Mr. President, this measure is now before the Senate as a privileged matter in lieu of a formal conference report. I urge that the Senate concur in the amendment of the House and send this measure on to the President for his signature.

Mr. President, both the House and Senate versions of this legislation adopted the same basic approach: That being to establish, in response to severe unemployment problems caused among veterans by the present recession, a new, emergency program of job training for certain veterans, under which payments would be made to employers as incentives to hire and train veterans who have been unemployed for long periods of time. Under both versions, the VA and the Department of Labor would share in the administrative duties, and the program, consistent with its emergency nature, would be closed to new applicants by the end of fiscal year 1984. The differences between the two versions were, for the most part, not substantial, but they were fairly numerous. For a detailed discussion of all those differences, and their resolution, I would refer my colleagues to the "explanatory statement of House bill, Senate amendment (S. 1033), and compromise agreement on H.R. 2355, the Emergency Veterans' Job Training Act of 1983." I ask unanimous consent that the explantory statement appear in the RECORD at the conclusion of my remarks. At this point, I will simply highlight three of the major differences and the ways in which they have been resolved.

First, on the issue of eligibility: The House bill would have been open to all veterans of the Vietnam era, as well as to certain veterans with service-connected disabilities incurred at any time during or after the Vietnam era, while the Senate amendment would have specifically targeted three groups of wartime veterans—that is, not only veterans of the Vietnam era, but also those of the Korean conflict and World War II. Under the compromise agreement, veterans of the Vietnam era and the Korean conflict would be eligible, as long as they have either served a minimum of 180 days or have a service-connected disability.

Second, the House bill contained a vocational training program, separate from and in addition to the on-the-job training program of payments to employers contained in both bills. Benefits of up to $500 a month have been payable directly to a veteran pursuing an associate degree program at a vocational school. The compromise agreement does not contain this provision, but does contain two related provisions, the first permitting employers to arrange for some or all of their job training programs to be carried out at such a school, and the second expanding certain existing GI bill eligibility for Vietnam-era veterans in order to pursue associate degree programs which are predominantly vocational in content, subject to certain funding limitations in the compromise agreement.

And third, on the issue of the total cost of the legislation, the House bill would have authorized total appropriations of $325 million—of which $25 million would have been for the final quarter of fiscal year 1983, and $150 million for each of fiscal years 1984 and 1985—while the Senate amendment would have authorized total appropriations of $150 million for fiscal year 1984. The compromise agreement contains a total authorization figure of $300 million—$150 million for fiscal year 1984, and $150 million for fiscal year 1985. These are the amounts that were approved particularly for the purpose of this legislation by the full Congress earlier this summer in the First Concurrent Resolution on the Budget for Fiscal Year 1984, House Concurrent Resolution 91. Since it would be impracticable to expect that the program could be implemented any earlier than the start of the new fiscal year, no authorization was included in the compromise agreement for fiscal year 1983.

Mr. President, I wish to take this opportunity to expand on the discussion contained in the explanatory statement of certain issues presented by the compromise agreement. First, on the issue of the proper division of administrative responsibilities between the VA Administrator and the Secretary of Labor, the compromise agreement would on cursory examination appear to provide the lion's share of the responsibilities to the VA, while involving the Labor Department in only a few specific areas, such as information and outreach. As I have noted in the past, I believe strongly that the recently expanded authority and abilities of the Department of Labor, and specifically the Office of the Assistant Secretary for Veterans' Employment, suggest a special competence to deal with various aspects of this legislation. In fact, the original version of S. 1033 as introduced by me reflected this view by basically designating the Department of Labor as the lead agency for purposes of administering this program. However, it later became clear through our hearings and discussions with agency personnel that the VA was best suited to handle the program funding and to carry out the actual disbursement of checks. Accordingly, the VA has been designed to receive the necessary appropriations and to issue payments. The compromise agreement's further designation of the Administrator as having primary administrative responsibility in most other areas, except where specifically reserved to the Secretary of Labor, flows, I believe, naturally and directly from the Administrator's funding responsibilities, and does not, in my view, significantly detract from the important role that can and should be played by the Department of Labor. Joint administration often may sound attractive in theory, but for purposes of swift implementation and ready accountability, I do agree that it is appropriate to designate one agency as the lead agency, and the VA—as the agency holding the pursestrings—should be that agency. But I would note and emphasize that there is nothing in the compromise agreement which would preclude either the Administrator or the Secretary from assigning, contracting or delegating their duties to another entity in order to expedite or improve the implementation or administration of the program established under the compromise agreement—and certainly nothing to preclude consultation or cooperation on any issue that may arise under the act. Thus, although the

compromise agreement provides no fully defined specific role for the Department of Labor in the area of, for example, approval of veteran applications, it would be my expectation that the VA would work together with the Department of Labor in establishing and implementing the necessary administrative mechanisms for determining whether a veteran meets the unemployment criteria for eligibility.

With regard to the Administrator's authority to conduct investigations of applications under the act, the compromise agreement would specifically authorize the Administrator to withhold approval of an employer's application pending an investigation, and, based on the outcome of the investigation, to deny approval. I would point out that although the eligibility criteria for veterans are far less numerous and complex than the approval criteria for employer programs of job training—so that there may be expected to be a less compelling and less frequent need for thorough prior investigations—nothing in the compromise agreement would preclude a similar withholding or denial of approval pending the investigation with regard to applications by veterans. I would emphasize, however, that such a process should be governed by the same rules as were recommended in the Senate report on S. 1033—Report No. 98-132, at page 17—regarding employer applications; namely, that this investigation authority should be exercised sparingly, in two types of situations—first, where circumstances suggest a reasonable doubt about some aspect of a particular applicant's ability to comply with the requirements established under the act; and second, through a program of random checks designed to determine whether the information contained in the application is correct and the matters certified are as they have been certified to be.

One of the approval criteria established under the compromise agreement—section 7(d)(11)—is derived from a provision in the House bill which would have required the employer to certify that the specifics of the employer's training program be stated in a written agreement signed by the employer and the veteran. As modified in the compromise agreement, this provision would require the employer to furnish the veteran with a copy of the employer's certification—which would contain all the specifics of the proposed training program—and to obtain from the veteran a signed acknowledgement of receipt of the certification. In connection with this modification, I would emphasize that, although I believe it is appropriate and desirable to provide a veteran with a full and timely description of the program of job training which the veteran is preparing to undertake, I would emphasize that there is no intention on the committees' part to create a private contractual relationship between the veteran and the employer—or to establish any private rights of action between them—for enforcement of the requirements of the compromise agreement.

Another criterion included in the compromise agreement—section 7(d)(4)—and derived from the House bill would require the employer to certify that training will not be offered to a veteran who is already qualified for the job for which training is to be provided. In the explanatory statement, the committees note that an employer would have satisfied this requirement by conducting a "reasonable, good-faith inquiry" into a veteran's qualifications. As an example of such a reasonable inquiry, I would suggest that an employer who has in good faith sought information regarding the veteran's prior work experience, has made appropriate contact with previous employers of the veteran, and has conducted some independent evaluation or testing of the veteran's abilities and aptitudes, might be considered to have satisfied the requirements of this provision.

One final area of the compromise agreement upon which I wish to comment involves the issue of overpayments. The House bill would have established liability for overpayments, with respect to both employers and veterans, where the party involved submitted materials which were willfully or negligently false. Under the Senate amendment, overpayment liability would have attached without regard to the applicant's state of mind, wherever the material submitted was false or clearly unsupportable in any material respect. The compromise agreement strikes a balance midway between these two provisions, with the House standard of proof—that is, willfully or negligently false—assigned in cases where the overpayment is caused by the veteran, and a standard derived from the Senate standard—that is, "false in any material respect," or failure "in any substantial respect to comply" with a requirement of the act—assigned in cases where the employer has caused the overpayment. In my view, this balance is appropriate in order to reflect both the existing comparable practice under title 38 and the purposes of the compromise agreement. Under section 1785 of title 38, which relates to overpayments of educational assistance paid to a veteran by the VA, the direct payee—the veteran—is liable for the overpayment without regard to fault or state of mind, while the indirect payee—the educational institution—is liable only for overpayments resulting from certain willful or negligent conduct. Under the present act, the roles are reversed—with the institutional entity as direct payee, and the veteran as indirect payee—so that it is found to be appropriate to reverse the standards of proof correspondingly. This approach also emphasizes that, although the program established under the act is one of payments to employers, the ultimate and primary intended beneficiaries of the program are the veterans participating in it, and that it would not be appropriate for any right to assistance under the act to be vested in any employer other than as specifically authorized under the act.

Mr. President, I believe that this legislation represents an excellent compromise between the House and Senate measures—retaining the best elements of both. I think that the compromise process on this occasion was greatly enhanced by the remarkable unity of purpose and program similarity between the two measures, with the result that the bulk of the issues to be resolved in House-Senate discussions involved questions not so much of what our goals were, but of how best to implement our shared goal.

In this vital process, I have in particular enjoyed the fine cooperation and support of my good friends and colleague on the Veterans' Affairs Committee, ALAN CRANSTON, Congressman MARVIN LEATH, the original sponsor of H.R. 2355 in the House, and my fine friend and colleague Congressman SONNY MONTGOMERY, chairman of the House Veterans' Affairs Committee. In addition, the tireless and skilled efforts of the staffs of the House and Senate Veterans' Affairs Committees were indispensable and are greatly appreciated.

I would like to extend my special appreciation to Tom Harvey, Julie Susman and Scott Wallace of the Senate committee majority staff, to Jon Steinberg, Ed Scott and Babette Polzer of the minority staff, and to Mack Fleming, Frank Stover and Jill Cochran of the House Veterans' Affairs Committee staff. Valuable technical assistance—particularly in the early stages of this legislation—was provided by Joe Juarez of the Office of the Assistant Secretary for Veterans' Employment in the Department of Labor. Finally, the members and staffs of both committees owe a special debt of appreciation to Bob Cover of the House Office of Legislative Counsel, for his fine drafting assistance in compiling the compromise agreement.

Mr. President, I strongly urge my colleagues to join me in supporting this important legislation.

Mr. THURMOND. Mr. President, I rise in strong support of this highly meritorious legislation which would establish a new emergency program of job training for certain unemployed wartime veterans.

I want to commend my distinguished colleague from Wyoming, the chair-

man of the Veterans' Affairs Committee, and the distinguished ranking minority member of the Veterans' Affairs Committee for their many efforts in developing this legislation.

Mr. President, as we all know, the high unemployment rates of the past several years are now beginning to fall as the economy rebounds from the recession. However, the unemployment rate among Vietnam-era veterans remains high. There are also many Korean veterans who have been displaced from their jobs and must acquire new skills in order to achieve meaningful employment.

In order to assist these deserving veterans, this program would provide incentives in the form of payments to employers who hire and train eligible veterans who have been umemployed 15 out of the 20 weeks immediately preceding their application for participation in the program. The program will be carried out by the Administrator of Veterans' Affairs and the Secretary of Labor, through the Assistant Secretary of Labor for Veterans' Employment.

Mr. President, earlier this year the Congress enacted Jobs legislation to assist the Nation's unemployed to return to the work force. However, that legislation was not targeted in any way to assist the Nation's veterans. Our veterans are a very special group of citizens to whom we owe a great deal, for without their service and sacrifice, we would not enjoy the freedoms that we have today.

I therefore, strongly support this fine employment assistance program for veterans, and I urge the support of my colleagues.

"EMERGENCY VETERANS' JOB TRAINING ACT OF 1983"

Mr. CRANSTON. Mr. President, as the ranking minority member of the Committee on Veterans' Affairs and as the coauthor in the Senate of the pending measure, I am pleased to rise and join with the distinguished chairman of the Veterans' Affairs Committee, my good friend from Wyoming (Mr. SIMPSON), in urging the Senate to approve the amendments of the House to the amendments of the Senate to H.R. 2355, the proposed Emergency Veterans' Job Training Act of 1983. The provisions of the House substitute amendment to the text embody a compromise agreed to after extensive negotiations between the two Veterans' Affairs Committees.

The compromise agreement is derived from provisions contained in H.R. 2355 as passed by the House on June 7 and from the substitute amendment passed by the Senate on June 15, which incorporated the provisions of S. 1033, the proposed Veterans' Emergency Job Training Act of 1983, as reported. The Senate amendment to the original House-passed bill was an amalgam of the bills that our distinguished committee chairman (Mr. SIMPSON) and I introduced in April, S. 1033 and S. 992, respectively.

Mr. President, the compromise agreement represents a most equitable resolution of the differences between the two bodies on this legislation. In fact, I truly believe that the compromise represents a better legislative product than did either the House or Senate versions. The Senate's position on the matters addressed in the compromise—including a number of key provisions derived from a measure that I introduced on April 6, S. 992, the proposed Veterans Emergency Retraining Act of 1983—are well represented in the final agreement. The committees, both majority and minority members, have worked closely together in achieving this compromise. The end result is, as was the original Senate-passed measure, a bipartisan demonstration of our committees' continuing concern for and commitment to our Nation's veterans.

When I introduced S. 992 earlier this year and again at the time of the committee's hearing on jobs legislation on April 20, I set forth three basic elements that I believed were vital for inclusion in the program that the committee was developing and which I urged be used as the basis for consideration of legislation in this area.

First, that the program be competitive with other job training programs conducted by the Federal Government—particularly those conducted under the Job Training Partnership Act. The compromise agreement as presented to the Senate today meets that test by assuring that the level of training assistance—50 percent of starting wages—is comparable to the assistance available under the JTPA program.

Second, that the program should avoid costly and time-consuming administrative requirements and rigidities so as not to discourage potential employers from participating in it and should keep redtape, delays, and paperwork to a minimum. Again, the compromise agreement does this by incorporating the Senate bill's approach to approval of job training programs.

Indeed, I am delighted that a number of the basic provisions of my measure, S. 992, regarding administrative flexibility for employers through a simplified approval process based on employer certifications, rather than preapproval investigations, have been incorporated into the compromise agreement. Likewise, I am also very pleased with the compromise reached on the veterans who would be eligible for participation under the bill—including Korean-conflict veterans along with Vietnam-era veterans—and with the House's agreement to assign to the Department of Labor the lead role in job development under the legislation.

Mr. President, the third basic element that I set forth was, as I noted at the time that the measure first passed the Senate, not met by either the House- or Senate-passed measures—that is, that the program be established as a temporary, limited entitlement not requiring an appropriation before it could begin, rather than as an authorization of appropriations. I believed strongly that reliance on an authorization of appropriations ran a substantial risk of the program never being funded, of funding being delayed, or of the program being funded at a level substantially less than the authorized level. At best, I felt that an authorization approach could serve to delay substantially the implementation of the program authorized by the legislation.

However, when my amendment for this approach failed on a 6-to-6 tie vote in committee, I sought to ameliorate that problem by urging in a June 8, 1983, letter—in which my good friend, our committee chairman (Mr. SIMPSON), joined me—to the Senate Appropriations Committee that the committee include in the VA's fiscal year 1984 appropriations $150 million for a veterans' job program pending the final enactment of authorizing legislation. Thereafter, as my colleagues may recall, the Senate approved the additional $150 million for this purpose—as a result of an amendment by the distinguished Senator from Arizona (Mr. DECONCINI) which was adopted during Appropriations Committee consideration of H.R. 3133, the HUD-Independent Agencies Appropriations Act, 1984. Unfortunately, because of a threatened Presidential veto, the funds were deleted during conference on that measure—but, as noted by the conferees in the joint explanatory statement—this was done without prejudice pending the enactment of authorizing legislation.

Mr. President, on June 29, after the conferees deleted this funding, both the Senator from Wyoming (Mr. SIMPSON) and I expressed our concerns about this action to the chairman of the HUD-Independent Agencies Appropriations Subcommittee (Mr. GARN) during debate on the conference report on H.R. 3133. He agreed with me that it was likely that funding would be forthcoming in the continuing resolution once the authorizing legislation was enacted. He also agreed that the VA and the Department of Labor should begin then—

Taking all steps necessary—including such matters as developing the interagency arrangements necessary to insure that VA and Labor Department activities to carry out the program will mesh smoothly, preparing regulations and directives and other programmatic guidance for field personnel, planning for the training of program personnel, and developing computer and other

support activities—to gear up for putting the program into operation in October.

In this regard, I want to stress the position of the House and Senate Committees on Veterans' Affairs, as set forth in the explanatory statement that the distinguished chairman of the Senate committee has inserted in the RECORD, that the committees "expect that the entire $150 million authorized for fiscal year 1984 will be appropriated in the continuing resolution for fiscal year 1984." This congressional action—together with VA and Department of Labor efforts, which the committees urged in the explanatory statement be undertaken immediately, to prepare for implementation of the program—should mean that this new program designed to assist certain long-term unemployed veterans can get underway on or very soon after October 1 of this year.

Against this background, although I would prefer the limited entitlement approach that I proposed in committee, I fully support the pending compromise which authorizes the appropriation of $150 million for the program in each of fiscal years 1984 and 1985.

I also want to note that the explanatory statement inserted in the debate in both Houses on the compromise agreement contains the definitive legislative history for and the underlying intention of the committees in proposing the compromise agreement, in the same way as would a joint explanatory statement accompanying a conference report where a formal conference occurs.

Mr. President, before concluding my remarks, I want to take a moment to extend my deepest thanks to those who worked so diligently on this measure—both for their efforts and the cooperation and courtesy that was extended to me and the members of the committee's minority staff. Of course, the distinguished chairmen of both the committees, Senator SIMPSON and Congressman MONTGOMERY, deserve congratulations on the development of this measure, as does the ranking minority member (Mr. HAMMERSCHMIDT) of the House Veterans' Affairs Committee and the author of the House bill (Mr. LEATH), who serves as chairman of that committee's Subcommittee on Education, Training and Employment, and the subcommittee's ranking minority member (Mr. SOLOMON).

In addition, the excelllent work on this measure of the staff members of the House Committee—Mack Fleming, Frank Stover, Jill Cochran, and Rufus Wilson—as well as the splendid technical assistance of Robert Cover, assistant counsel, Office of the House Legislative Counsel, was invaluable and is deeply appreciated. Finally, I want to make special mention of the very fine work done by the Senate committee staff in developing this measure—by Scott Wallace, Julie Susman, and Tom Harvey of the majority staff and by Babette Polzer, Ed Scott, and Jon Steinberg of the minority staff.

Mr. President, it is particularly gratifying to note the speed with which the Congress has acted in connection with this legislation. Indeed, only 5 months have passed since the Veterans' Affairs Committee unanimously approved a motion I made on March 1 to add $150 million to our recommendations to the Budget Committee for the fiscal year 1984 budget in order to permit us the latitude to consider a program of special training and job assistance to unemployed and underemployed veterans. That amount was subsequently approved by the Budget Committee and both the Senate and the House in the first concurrent resolution for fiscal year 1984. At the same time as we sought to secure that budgetary latitude, we were developing the legislation and seeking to obtain appropriations for it, as I have just described.

With final passage of this measure at hand, I believe that Congress has demonstrated once again its ability to respond promptly and effectively to the needs of those who have served the Nation during time of war and to continue to fulfill our deep moral commitment to them as honored veterans.

Despite the administration's strong opposition to this legislation throughout its development in the Congress, a Presidential veto would be futile in light of the overwhelming, bipartisan support for this measure in both Houses.

Mr. President, the compromise agreement now before the Senate is an excellent one, and it has my complete support.

VETERANS EMERGENCY JOB TRAINING

Mr. BOSCHWITZ. Mr. President, we are about to pass the conference report on the new veterans emergency Job Training Act.

This bill, which I am a cosponsor of, was designed by the Veterans Affairs Committee to address the serious unemployment problems of wartime veterans.

Unemployment among wartime veterans hit its highest level since World War II in February, and although unemployment overall has been declining since then, there still exists a very real problem. In fact, the unemployment rate amongst the youngest Vietnam vets (ages 25 to 29) remains double the national rate of nonveterans.

This act will provide funds to provide on-the-job training for unemployed veterans of the Korean and Vietnam wars. Under this act, the VA will assist employers with the cost of training the veteran. The training period can be no longer than 9 months, or 15 months in the case of service-connected disabled veterans. The training assistance moneys to be paid to the employer will be 50 percent of the vets wages during the training period, up to a $10,000 total.

We have set $300 million as the spending level—to be obligated over 2 years. The program itself is designed to remain open to new participants through fiscal year 1984, although payments can continue through fiscal year 1985.

Mr. President, this act is an excellent interim program that will help unemployed wartime vets as we come out of the recession. I am a strong supporter of this legislation and I am pleased to see that Congress is willing to enact it.

Mr. BAKER. Mr. President, I ask unanimous consent that an explanatory statement of the House bill and the Senate amendment and the compromise agreement on H.R. 2355 appear in the RECORD appropriately placed.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

EXPLANATORY STATEMENT OF HOUSE BILL, SENATE AMENDMENT (S. 1033), AND COMPROMISE AGREEMENT ON H.R. 2355, THE "EMERGENCY VETERANS' JOB TRAINING ACT OF 1983"

This explanatory statement explains the provisions of H.R. 2355 as passed by the House of Representatives, the provisions of the bill as passed by the Senate with an amendment incorporating the provisions of S. 1033 as reported, and the provisions of a compromise agreed to by the Committees. The differences between the House bill, the Senate amendment, and the compromise agreement are noted below, except for clerical corrections, conforming changes made necessary by agreements reached between the Committees, and minor drafting, technical, and clarifying changes.

This explanatory statement is being presented in lieu of a joint explanatory statement of a committee of conference.

GENERAL

Both the House bill and the Senate amendment would establish a new, emergency program of job training for certain veterans, providing a system of payments to employers who hire and train eligible veterans who have been unemployed 15 out of the 20 weeks immediately preceding their application for participation in the program. Both would provide some administrative role for both the Veterans' Administration and the Department of Labor. Finally, the program established by the House bill and the Senate amendment would generally be closed to new applicants at the end of fiscal year 1984.

STATUTORY FORMAT

The House bill is in the form of a free-standing law. The provisions of the Senate amendment establishing the new program would be set forth in a new chapter 44 proposed to be added to title 38, United States Code.

The Compromise agreement adopts the format of the House bill.

Hereinafter, citations to provisions in the Senate amendment that would be set forth in the proposed new chapter 44 of title 38 are made by reference to the "new section" number in title 38. For example, the refer-

ence to proposed new section 2102 of title 38 is referred to as "new section 2102".

PURPOSE

The House bill (section 2(b)) states the purpose of the legislation in terms of promoting job training and employment of unemployed Vietnam-era and disabled veterans; the Senate amendment (new section 2101), in terms of addressing veterans' unemployment problems by providing employers with financial incentives to employ and train certain unemployed wartime veterans.

The House bill (section 2 (a) and (c)), but not the Senate amendment, also contains Congressional findings relating to the need for this legislation and would require the Administrator of Veterans' Affairs and the Secretary of Labor to administer the new program in a vigorous and expeditious manner.

The compromise agreement (section 2) follows the Senate amendment.

ADMINISTRATION OF PROGRAM

The House bill (section 4) would provide that the program shall be carried out by the Administrator in cooperation with the Secretary of Labor.

The Senate amendment (new section 2102) would provide that the program shall be carried out by the Administrator, jointly with the Secretary, and that the respective responsibilities of each must be specified in an interagency agreement (with certain responsibilities required to be assigned as specified in the legislation) entered into within 60 days after enactment but in no event later than October 1, 1983.

The compromise agreement (section 4(a)) would provide that the program established under this Act shall be carried out by the Administrator and, to the extent specifically provided in the Act, the Secretary.

As noted below under the heading "INSPECTION OF RECORDS; INVESTIGATIONS", the compromise agreement specifies (section 12(d)) that the Administrator may elect to enter into an agreement with the Secretary providing for Department of Labor entities specified in the agreement to carry out certain responsibilities of the Administrator relating to the monitoring of compliance (section 12(b)), and the conduct of any investigations necessary to determine compliance (section 12(c)). The compromise agreement also (section 15) assigns to the Secretary primary responsibility for promoting the development of employment and job training opportunities and joint responsibilities with the Administrator with respect to outreach and public information and assisting veterans and employers in applying to participate in the new program, and (section 14) authorizes the Secretary to provide certain employment counseling services.

An important goal of the Committees has been to minimize the administrative obstacles to swift implementation of the program, in order that veterans and employers might be brought into the program as expeditiously as possible, consistent with the emergency nature of this legislation.

The Senate amendment (new section 2102(c)), but not the House bill, would provide that the Secretary of Labor shall carry out the Secretary's responsibilities through the Assistant Secretary of Labor for Veterans' Employment established under section 2002A of title 38.

The compromise agreement (section 4(b)) contains this provision.

ELIGIBILITY FOR PROGRAM

The House bill (section 3(1)) would provide eligibility for veterans of the Vietnam era, as defined in section 101(29) of title 38 (the period beginning August 5, 1964, and ending on May 7, 1975), and for disabled veterans entitled to receive service-connected disability compensation from the VA for a disability incurred or aggravated any time after August 4, 1964.

The Senate amendment (new section 2103(a)) would provide eligibility for veterans of World War II (defined in section 101(8) of title 38 as the period beginning December 7, 1941, and ending December 31, 1946), the Korean conflict (defined in section 101(9) of title 38 as the period beginning June 27, 1950, and ending January 31, 1955), and the Vietnam era. Service during those periods would be specifically defined by reference to entitlement standards established under the GI Bills of those periods—generally, that the veteran was discharged under conditions other than dishonorable, and met certain minimum-service requirements: World War II—90 days; Korean conflict—90 days; and Vietnam era—180 days. These minimum service requirements would not be applicable to veterans discharged for service-connected disabilities.

Under both the House bill (section 5(a)) and the Senate amendment (new section 2103(a)), eligibility would further be conditioned upon the veteran having been unemployed not not less than 15 of the last 20 weeks at the time of applying for participation in the program. A veteran would be considered "unemployed" when the veteran is without a job (to be determined, under the House bill, in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor) and wants and is available for work. Under the Senate amendment, but not the House bill, eligibility would be further conditioned upon the veteran being unemployed when applying to participate. As an alternative to unemployment for 15 out of 20 weeks, the Senate amendment, but not the House bill, would provide eligibility to an unemployed veteran who has been terminated or laid off from employment, is eligible for or has exhausted entitlement to unemployment compensation, and has no realistic opportunity to return to employment in the same or a similar occupation in the geographical area where the veteran previously held employment.

The compromise agreement (section 5(a)) would provide eligibility for a Korean conflict or Vietnam-era veteran who is unemployed and has been unemployed for at least 15 of the 20 weeks immediately preceeding the date of application for participation in a program of job training. The term "Korean conflict or Vietnam-era veteran" would be defined to mean a veteran who served for one day or more during either of those periods and who (1) has served at least 181 days or (2) was discharged from service for a service-connected disability or is entitled to compensation for a service-connected disability. The term "unemployed" would apply to any period during which the veteran is without a job and wants and is available for work.

Although the compromise agreement does not contain the language from the House bill mandating the use of criteria from the Bureau of Labor Statistics in determining whether a veteran is without a job, it is the Committees' general contemplation that these criteria will be applied. However, the Committees wish to emphasize their intention that the fact that a veteran is or has been a "discouraged worker"—i.e., one who ceased looking for work because he or she believed none was available—should in no way preclude participation in the new program.

VETERANS' APPLICATIONS

Both the House bill (section 5(b)) and the Senate amendment (new section 2103(b)) would require that veterans seeking to participate in a program of job training submit an application in such form and containing such information as is prescribed administratively. The Senate amendment, but not the House bill, would require the application to specify the training objective to be pursued.

The compromise agreement (section 5(b)(1)) follows the House bill with modifications that would clarify that a veteran's application is not for participation in a particular employer's program of job training and would require that an application contain the veteran's certification regarding unemployment status and military service requirements.

APPROVAL OF VETERANS' APPLICATIONS

The House bill (section 5(b)) would provide that an application of a veteran may not be approved if it is found that the veteran is already qualified for the job for which the training would be provided.

The Senate amendment (new section 2103(b)) would provide that a veteran's application must be approved unless it is found that the veteran either is not eligible or is already qualified for the specified training objective. In addition, under the Senate amendment, a veteran who has been determined to be eligible would be certified as such and would be furnished with a copy of a certificate of eligibility for presentation to an employer offering a program of job training.

The compromise agreement (section 5(b)(2)) follows the Senate amendment with three modifications:

First, the provision for disapproval of the veteran's application if the veteran is already qualified for the training objective is deleted. The Committees recognize that at this early stage of determining a veteran's basic eligibility, it would often be premature to require veterans to commit themselves to a particular training objective. The goal of precluding the payment of training assistance under this legislation on behalf of veterans who are already qualified in the proposed field of training should be adequately served by the requirement, derived from the House bill and contained in section 7(d)(4) of the compromise agreement (discussed below), that an employer certify that training will not be provided to veterans who are already qualified.

Second, approval of the veterans' application could be withheld if the Administrator determines that such withholding of approval is necessary in order to limit the number of veteran participants in a program of job training under this measure where it is determined that sufficient funds are not available to permit that veteran's participation. This change is designed to clarify the Administrator's authority to ensure that spending under the program does not exceed the funds appropriated. It corresponds to section 9 of the compromise agreement, which gives the Administrator authority to withhold or deny approval of an eligible veteran's entry into a program of job training on the basis of funding limitations. Thus, the Act contains two separate mechanisms for controlling obligations within the bounds of available funds: as an initial safeguard, the pool of veteran appli-

cants having certificates may be limited, and, at a subsequent point in the pre-obligation process, the entry of veterans previously certified as eligible into VA-assisted training may be postponed or stopped in order to keep obligations within those bounds.

Third, the certificate of eligibility furnished to the veteran would be valid for only 60 days, would be required to specify the dates of issuance and expiration, and could be renewed upon application by the veteran. This provision is designed to provide both the Administrator and employers with a mechanism for ensuring that a veteran's eligibility is reasonably current and the Administrator with a further mechanism for estimating potential obligations of funds. Consistent with the provisions of section 10 of the compromise agreement, the Committees intend that the certificate also specify that it is subject to the availability of funds, that a veteran may not enter an approved program of job training under it until the employer has given the VA two weeks notice of intention to enter the veteran into such training, and any other matters that would be useful from the standpoint of the effective implementation of this legislation.

DURATION OF ASSISTANCE

The House bill (section 5(c)) would provide that training assistance could be paid for a period of up to twelve months in the case of a veteran with a service-connected disability rated at 30 percent or more, or, in the case of any other eligible veteran, for a period of six months with up to an additional six months of assistance available at the discretion of the Administrator.

Under the Senate amendment (new section 2104(b)), the maximum period of assisted training would be twelve months, except that an additional six months could be allowed for veterans with service-connected disabilities rated either at 30 percent or more or at 10 or 20 percent if the veteran has been determined to have a serious employment handicap under section 1506 of title 38, relating to vocational rehabilitation for certain veterans with service-connected disabilities.

The compromise agreement (in section 5(c)) contains the following maximum training-period provisions: fifteen months—across the board, without the need for individual extensions—in the cases of certain veterans with service-connected disabilities rated either at 30 percent or more or at 10 or 20 percent if the veteran has been determined to have a serious employment handicap under section 1506 of title 38, and nine months in the cases of other veterans.

EMPLOYER JOB TRAINING PROGRAMS

The House bill (section 6(a)) would provide that, to qualify as a program for which assistance may be paid, a program of job training must provide training for a period of at least six months. Under the Senate amendment (new section 2104(a)), an assisted program must generally be for no less than six months, except that a program of between three and six months could be approved where the purposes of the program would otherwise be met.

The compromise agreement (section 6(a)) follows the Senate amendment.

The House bill (section 6(b)) would provide that an eligible veteran may select an approved program of job training with any employer. Under the Senate amendment (new section 2105(c)), an eligible veteran may accept an approved program offered to the veteran by any employer.

The compromise agreement (section 6(b)) provides that a veteran approved for participation and having a current certificate of eligibility may enter any approved program offered to the veteran by the employer.

The Senate amendment (new section 2104(a)), but not the House bill, would require that in order to qualify as a program of job training, an employer's program must offer training in an occupation in a growth industry, an occupation requiring the use of new technological skills, or an occupation for which demand for labor exceeds supply.

The compromise agreement (section 6(a)(1)) contains this provision. The committees intend that the Administrator shall construe these terms liberally—that is, in the case of an occupation with respect to which there is some doubt as to whether it should be included in one of these three categories, that doubt should be resolved in favor of including it. In case of such doubt, it might be useful for the Administrator to consult with the Secretary of Labor or other appropriate entity in construing the statutory terms.

APPROVAL OF EMPLOYER PROGRAMS

APPROVAL PROCESS

The House bill (section 8) would establish basically a two-step approval process for programs of job training. First, the employer would submit a written application containing a certification that certain criteria would be met; and, second, the Administrator would be required to conduct an investigation regarding the criteria for approval in order to determine whether the criteria are met.

The Senate amendment (new section 2105(c)) would require the employer to submit with the application a certification that all applicable criteria for job training programs would be met, and would essentially eliminate the requirement for the second step under the House bill, by mandating generally that a proposed program of job training with respect to which the application and certification comply on their face with the requirements of the legislation be approved without the need for any prior investigation. Investigation would be authorized, but not required, and approval of the proposed program being investigated could be withheld pending the outcome of the investigation, whereupon, depending on the outcome, the program could be disapproved.

The compromise agreement (section 7(a)(2) and (g)) follows the Senate amendment. The Committees believe that this approach will minimize administrative difficulties, enhance the attractiveness of the program to employers, and expedite implementation of the program. To the extent that such limited prior approval proves to be a less effective safeguard than mandatory prior investigation, the Committees believe that the post-approval safeguards in the compromise agreement—including the authorities regarding inspection of records, monitoring, investigation, discontinuance of approval, periodic certifications connected with each payment of assistance, and overpayment remedies with respect to both employers and veterans, as well as the availability of civil penalties under the Federal False Claims Act (31 U.S.C. § 3729-31) and criminal penalties under the Federal False Statement Act (18 U.S.C. § 1001)—should be sufficient to ensure that the requirements of this legislation will be able to be properly enforced so that limited resources will not be expended for nonqualified programs of training.

CRITERIA FOR APPROVAL OF EMPLOYER PROGRAMS

Both the House bill (section 9) and the Senate amendment (new section 2107) would preclude assistance to programs of job training for employment in seasonal, intermittent, or temporary jobs (the House bill, but not the Senate amendment, providing an exception for seasonal jobs as determined to be appropriate), for employment under which commissions are the primary source of income, for employment involving political or religious activities, or where the training program would be carried out outside the United States. The House bill (section 6(b)), but not the Senate amendment, would exclude employers other than for-profit private employers. The Senate amendment (new section 2107(4)), but not the House bill, would exclude federal agencies.

The compromise agreement (section 7(b)) follows the Senate amendment.

The House bill (section 8(b)(3)) would require the employer to certify that there is a reasonable certainty that a position of the type for which the veteran is to be trained will be available to the veteran at the end of the training period.

The Senate amendment (new section 2105(b)(1)) would require the employer to certify that the employer has planned for the employment of the veteran in an appropriate position at the conclusion of the training period, and that the employer has no reason to expect that such a position will not then be available to the veteran on a stable, permanent basis.

The compromise agreement (section 7(d)(1)) follows the Senate amendment.

Both the House bill (section 8(b)(1)) and the Senate amendment (new section 2105(b)(2)) would require the employer to certify that veterans participating in its program of job training will be paid no less than other employees in such a program or, under the Senate amendment, a comparable program.

The compromise agreement (section 7(d)(2)) follows the Senate amendment.

The House bill, but not the Senate amendment, would require a pre-approval finding, upon investigation, that the program of job training will not be given to veterans who are already qualified for the job for which training is to be provided.

The compromise agreement (section 7(d)(4)) follows the House bill, with an amendment modifying this provision so as to require that the matter be included in the employer's certification (rather than necessarily be subject to pre-approval investigation). The Committees note that this provision is intended only to require the employer to conduct a reasonable, good-faith inquiry into a veteran's qualifications, and that section 8(c) of the compromise agreement would impose upon the veteran, and not upon the employer, liability for overpayments to the employer which result from false or incomplete information furnished to the employer by the veteran.

The House bill (section 8(c)(1)), but not the Senate amendment would require a pre-approval finding, upon investigation, that the job for which training is to be provided is one in which progression and appointment to the next higher classification are based upon skills learned through organized and supervised training on the job rather than on factors such as length of service and normal turnover.

The compromise agreement (section 7(d)(5)) contains a provision requiring the employer to certify that the job in question is one that involves significant training.

The House bill (section 8(c)(10)), but not the Senate amendment, would require a pre-approval finding that the training program will be stated in a written agreement signed by the employer and the veteran, and that a copy of the signed agreement will be provided to both the veteran and the VA.

The compromise agreement (section 7(d)(11) follows the House bill with an amendment modifying this provision so as to require that the matter be included in the employer's certification (rather than necessarily be subject to pre-approval investigation) and to refer to a copy of the employer's certification under this subsection (subsection (d) of section 7 of the compromise agreement) rather than a written agreement.

Six other approval criteria which were included in substantially similar form in both the House bill (section 8(c)), as matters requiring pre-approval findings but not certification, and the Senate amendment (new section 2105(b)), as matters subject to certification, are included in the compromise agreement. These criteria relate to the nondisplacement of current or laid-off workers (paragraph (3) of section 7(d)), the adequacy of training content (paragraph (6)), the full-time employment of participating veterans (paragraph (7)), the length of the period of training as compared to that customarily required by employers (paragraph (8)), the availability of adequate training facilities (paragraph (9)), and the maintenance of records adequate to show employer compliance (paragraph (10)).

The House bill (section 8(c)(11)) would authorize the imposition of additional criteria as to which pre-approval findings would be required. The Senate amendment (new section 2105(b)(10)) would similarly authorize additional criteria as to which certification, rather than pre-approval findings, would be required.

The compromise agreement (section 7(d)(12)) contains a provision authorizing additional criteria that the Administrator determines are essential for the effective implementation of the program established by the compromise agreement.

The Committees note their intention that this authority to impose additional criteria is intended to meet unforeseen problems clearly necessitating the imposition of additional requirements. The Committees stress that this provision is not intended to give the VA authority to impose undue restrictions as was done with respect to the targeted delimiting date extension program (enacted in section 201(a) of Public Law 92-72) and required Congressional action (section 201(a) of Public Law 97-306) undoing the restrictions and extending the program for a year.

The Senate amendment (new section 2105(b)(3)), but not the House bill, would require the employer's certification to indicate the number of hours of training and to describe the training content of the program and the training objective.

The compromise agreement (section 7(e)) contains this provision with amendments requiring that the certification also specify the length of the program and the starting rate of wages and describe any agreement the employer has entered into under section 8 of the compromise agreement, relating to the provision of training through educational institutions.

The compromise agreement (section 7(f)) would also clarify that generally each of the matters specified in section 7(d)(1) through (11) of the compromise agreement as requiring employer certification prior to approval of a program of job training (i.e., not including matters that may be administratively required to be certified under paragraph (12) of section 7(d)) shall be considered to be affirmative substantive requirements. However, for purposes of section 8(c) of the compromise agreement, relating to overpayments, only the matters covered by paragraphs (1) through (10) would be considered requirements. Thus, a failure to provide a participating veteran with a copy of the employer's certification would not be grounds for an overpayment. For the purposes of section 11 of the compromise agreement, relating to the discontinuance of approval of veterans' participation in employer programs that fall out of compliance with requirements established under this legislation, the matters covered by all twelve paragraphs of section 7(d) would be considered such requirements. Hence, failures to provide participating veterans with copies of the employer's certificate and to meet requirements established administratively under the authority in paragraph (12) could, by virtue of section 7(f)(2)(B), result in discontinuance of approval.

The Committees note, with respect to the requirement (under subsections (d)(1) and (f) of section 7 of the compromise agreement) that the employer plan for the permanent employment of the veteran after training, that it is not their intention that an employer's failure to continue a veteran's employment after the completion of training should, in and of itself, result in the creation of an overpayment. An overpayment on the basis of subsection (d)(1) would result only where there is an affirmative finding, based upon an investigation or other action under section 12, that the employer had in fact, at the time of making the certification under subsection (d), failed to make plans for the continuing employment of such veterans as may complete training under the employer's program, had made other plans inconsistent with such continuing employment, had no reasonable basis at that time for expecting that a position would be available to the veteran on a stable and permanent basis at the end of the training period, or did have some affirmative basis for expecting that such a position would not then be available. In the making of such an affirmative finding, the record of the employer in continuing or not continuing the employment of veterans would certainly be relevant.

PAYMENTS TO EMPLOYERS

Computation of Amounts

The House bill (section 7(a)) would provide that the amount paid to an employer on behalf of a veteran for any period may not exceed 50 percent of the wages paid for that period, computed on the basis of the starting wage rate.

The Senate amendment (new section 2108(a)) would provide that the amount paid to an employer on behalf of a veteran may not exceed the lesser of 50 percent of the wages paid during the training period in question, or a specified annual dollar limit. That limit would be $9,000 in the cases of certain veterans with service-connected disabilities (including all veterans with disabilities rated at 30 percent or more, as well as those rated 10 to 20 percent disabled who have been determined to have a serious employment handicap under section 1506 of title 38), and $6,000 in the case of any other veteran.

The compromise agreement (section 8(a)) provides that the training assistance amount paid to an employer on behalf of a veteran for any period shall be 50 percent of the veteran's wages for that period—not counting any increase over the starting rate and without regard to overtime or premium pay—up to a total of $10,000 payable on behalf of any individual veteran.

The Committees stress that the rule relating to overtime and premium pay would apply regardless of the frequency or regularity with which such pay is paid for the job for which training is being provided.

Payment Periods

Both the House bill (section 7(b)) and the Senate amendment (new section 2108(a)) would provide for payments to be made to employers on a quarterly basis. The Senate amendment (new section 2108(b)), but not the House bill, would authorize the making of payments on a monthly, rather than quarterly, basis to private, for-profit businesses with 500 or fewer employees.

The compromise agreement (section 8(a)(1) and (3)) follows the Senate amendment with an amendment deleting the requirement that businesses be private and for-profit and establishing a requirement that the Administrator set a numerical limit by regulation.

The Committees recognize that cash flow problems sufficiently significant to warrant monthly payments may vary from one type of business or industry to another. Thus, the Committees believe that the Administrator should have considerable latitude in setting such limits, with the goal of attracting employers with relatively few employees into the program established under this legislation.

Certifications

Both the House bill (section 7(b)) and the Senate amendment (new section 2108(c)) would provide that no payment for a period of training may be made until individual certifications have been received from both the employer and the veteran. The veteran would be required to submit a certification as to the veteran's actual employment and training with the employer during the training period for which payment is to be made; and the employer would be required to certify that the veteran was employed and progressing satisfactorily during that period. The Senate amendment (new section 2108(c)(2)(B)), but not the House bill, would require the employer to indicate, in the first of these periodic certifications, the date on which the employment of the veteran began.

The compromise agreement (section 8(b)) contains these provisions with two modifications. First, each periodic certification by an employer would be required to include an indication of the number of hours worked by the veteran during the period for which payment is to be made; and, second, the employer's initial certification would be required to indicate the starting rate of wages paid to the veteran.

The House bill (section 7(a)), but not the Senate amendment, would specify that payments to employers employing disabled veterans may be used for the purpose of defraying the costs of making structural changes to the employer's workplace to remove architectural barriers.

The compromise agreement does not contain this provision.

The Committees note that nothing in the language of the compromise agreement would preclude employers from using training assistance payments to make reasonable accommodations to the needs of disabled veterans, which in the cases of certain types of disabilities (for example, blindness and deafness) would not necessarily be structural. The compromise agreement, in providing that the purpose of such payments is to assist employers in defraying the cost of necessary training, specifies no limitations on the uses to which payments may be put by employers.

OVERPAYMENTS

The House bill (section 7(c)) would provide that, if a willful or negligent false certification by either an employer or a veteran were to result in an overpayment of training assistance, the amount of the overpayment would be a liability to the United States of the party making the false certification, subject to collection in the same manner as any other debt due to the United States.

The Senate amendment (new section 2109(b)) would provide that, if a certification or application which was false or clearly unsupportable in any material respect were to result in an overpayment of assistance, the party submitting that certification or information would be liable for the overpayment. As in the House bill, the overpayment could be collected in the same manner as any other debt due to the United States.

The compromise agreement (section 8(c)(1)(A)) would provide that an employer would be liable for any overpayment of assistance resulting from a certfication, or information contained in an application, submitted by an employer that was false in any material respect. Also (under section 8(c)(1)(B)), if the Administrator finds that the employer has failed in any substantial respect to achieve compliance with any requirement (including matters deemed to be requirements for this purpose by virtue of section 7(f)(2)(A) of the compromise agreement—clauses (1) through (10) of section 7(d)) established under the compromise agreement (unless the employer's failure is the result of false or incomplete information provided by the veteran), any payment for the period of noncompliance would be an overpayment for which the employer would be liable.

A veteran's liability (section 8(c)(2)) for an overpayment would depend upon a finding by the Administrator that the veteran submitted material which was willfully or negligently false in any material respect in a certification or application submitted by the veteran to the Administrator or in information provided to an employer.

The compromise agreement (section 8(c)(3)) would further provide that overpayments recovered would be credited to funds available for payments under the compromise agreement and that, if no such funds remain, the amount of the overpayment recovered would be deposited into the U.S. Treasury. Finally, the compromise agreement (section 8(c)(4)) would authorize the Administrator to waive, in whole or in part, any such overpayment, in accordance with the terms and conditions of section 3102 of title 38, which authorizes waiver of recovery of claims under laws administered by the VA whenever the Administrator determines that recovery would be against equity and good conscience, and where application for relief from recovery has been made within 180 days of the date of notification of the indebtedness to the debtor.

Civil penalty

The Senate amendment (new section 2109(c)), but not the House bill, would authorize the administrative imposition of a civil penalty (up to $1,000 for each individual wrongfully employed in a program of job training under the Senate amendment), after an adjudication determined on the record after opportunity for an agency hearing, on an employer who has, willfully or with reckless disregard of the facts, made a false certification or has caused the administering agency to give approval contrary to the requirements of the legislation. Actions to impose such a penalty would be reviewable in the Federal courts.

The compromise agreement does not contain this provision.

The Committees note the existence of general authority, under the False Claims Act (31 U.S.C. §§ 3729-31), regarding the assessment and collection of civil penalties, as well as criminal sanctions (18 U.S.C. § 1001), through judicial rather than administrative processes, in cases of knowingly false, fictitious, or fraudulent claims or statements made to representatives of the Federal Government. The Committees strongly urge the Administrator (and, where appropriate, the Secretary of Labor) to ensure that, whenever in the implementation of the compromise agreement evidence of a violation of such a statute comes to light, the matter is vigorously pursued and, where appropriate, referred to the Department of Justice for action.

The Committees also note the existence of authority for the Department of Justice to provide, at the request of the agency involved, certain legal services in conducting investigations and examining witnesses, in connection with a claim before the agency (28 U.S.C. § 514), and believe that this authority may prove useful in determining whether any particular employer has acted knowingly and willfully in connection with the submission of a false claim, has submitted fraudulent materials, or has otherwise demonstrated conduct which would render that employer subject to the civil or criminal penalties noted above, or to any other applicable sanction established by law or regulation. In all such matters, the Committees urge prompt and full cooperation between the Administrator (and, where appropriate, between the Secretary) and the Attorney General, consistent with the terms and provisions of sections 514 and 516 (regarding representation by the Attorney General in any action in which the United States is a party) of title 28, and of applicable interagency agreements.

ENTRY INTO PROGRAM OF TRAINING

As noted above in the discussion of section 5(b) of the compromise agreement, under the subheading "Approval of Veterans' Applications", the compromise agreement (section 9) authorizes the Administrator to withhold or deny approval of a veteran's entry into an approved program of job training when necessary to avoid incurring obligations in excess of the funds available. The compromise agreement also requires that employers give the VA two weeks notice prior to a veteran's entry into VA-assisted training. That notice is intended to enable the Administrator to withhold or deny approval for the purpose of ensuring that obligations are not incurred in excess of available funds.

PROVISION OF TRAINING THROUGH EDUCATIONAL INSTITUTIONS

The Senate amendment (new section 2106), but not the House bill, would permit an employer to enter into an arrangement or agreement with an educational institution that has been approved for the enrollment of veterans under chapter 34 of title 38 for that institution to provide the program of training (or a portion thereof). When such an arrangement or agreement has been entered into, the application of the employer would be required to disclose that fact and describe the training to be provided by the institution.

The compromise agreement (section 10) contains this provision with amendments deleting any reference to "arrangements".

DISCONTINUANCE OF PAYMENTS FOR UNSATISFACTORY CONDUCT OR PROGRESS

The House bill (section 10), but not the Senate amendment, would authorize the Administrator to discontinue payments on behalf of a veteran based upon a finding by the Administrator that the conduct or progress of the veteran is unsatisfactory due to circumstances within the control of the employer.

The compromise agreement does not contain this provision. The Committees note that, under section 8(b)(2)(A) of the compromise agreement, quarterly payments may not be made until the Administrator has received from the employer a certification that the veteran was employed by the employer during the period for which payment is to be made and that the veteran's performance and progress during that period were satisfactory. The Committees also note that such a certification is subject to investigation under section 12(c) and overpayment collection under section 8(c).

DISCONTINUANCE OF APPROVAL OF PARTICIPATION IN CERTAIN EMPLOYER PROGRAMS

Both the House bill (section 11) and the Senate amendment (new section 2109(a)) would provide a mechanism for the disapproval of further participation by veterans in a program of job training which, subsequent to its approval, has fallen out of compliance with any of the requirements established under the legislation. The Senate amendment would authorize such disapproval (while the House bill would mandate it), and would establish a notice and hearing process to govern the disapproval process.

The compromise agreement (section 11) follows the Senate amendment.

INSPECTION OF RECORDS; INVESTIGATIONS

Both the House bill (section 12) and the Senate amendment (new section 2111(a)) would authorize examinations of the records and accounts of participating employers. The Senate amendment (new section 2111(b)) would also authorize the monitoring of program participants in order to determine compliance with the program requirements and investigation of any matter deemed necessary to determine compliance.

The compromise agreement (section 12(a), (b), and (c)) follows the Senate amendment with an amendment adding a provision (section 12(d)), derived from the Senate amendment (new section 2102(b)), authorizing, but not requiring, the Administrator to enter into an agreement with the Secretary of Labor to provide for the administration of the provisions regarding monitoring and investigations, or any portion of those provisions, by the Department of Labor. Duties undertaken by the Department of Labor pursuant to such an agreement would be au-

thorized to be carried out by any appropriate branch of the Department of Labor, notwithstanding the general requirement, contained in section 4(b) of the compromise agreement, that the responsibilities of the Secretary of Labor under the compromise agreement be carried out by the Assistant Secretary of Labor for Veterans' Employment.

COORDINATION WITH OTHER PROGRAMS

The House bill (section 14) would provide that a veteran may not receive benefits both under the House bill and under chapters 31 (relating to training and rehabilitation for veterans with service-connected disabilities), 32 (relating to post-Vietnam era veterans' educational assistance), 34 (relating to the so-called "Vietnam-era GI Bill"), or 35 (relating to survivors' and dependents' educational assistance) of title 38, or chapter 107 of title 10 (relating to educational assistance for current enlistees), for the same period.

The Senate amendment (new section 2108(d) (1) and (2)) would similarly preclude simultaneous payments of assistance under the Senate amendment and under chapter 31 or 34, under chapter 36 (which includes provisions for the payment of Vietnam-era GI Bill benefits for correspondence courses and for apprenticeship or other on-job training) of title 38, or where the employer is receiving any other form of assistance on account of the training or employment of the veteran. The Senate amendment (section 2108(d)(3)), but not the House bill, would prohibit the payment of assistance under the Senate amendment where the veteran on behalf of whom assistance is to be paid had already completed a program of job training under the program that would be established by the Senate amendment.

The compromise agreement (section 13) follows the Senate amendment with additional references, derived from the House bill, to chapters 32 and 35 of title 38.

COUNSELING

The House bill (section 16), but not the Senate amendment, would require the Administrator and the Secretary of Labor to provide counseling services, upon request, to eligible veterans in order to assist them in selecting a suitable program of job training.

The compromise agreement (section 14) contains this provision, with an amendment authorizing, rather than requiring, the provision of such counseling services.

INFORMATION AND OUTREACH; USE OF AGENCY RESOURCES

Both the House bill (section 15) and the Senate amendment (new section 2110) would provide that the responsibilities for information and outreach would be shared between the Veterans' Administration and the Department of Labor. Information and outreach activities would be targeted toward both veterans and employers; would be coordinated with services and opportunities provided for under chapters 41 (relating to job counseling, training, and placement services for veterans) and 42 (relating to employment and training of disabled and Vietnam-era veterans) of title 38, and with resources and programs available under the Job Training Partnership Act (Public Law 97-300) and would emphasize reliance on disabled veterans' outreach program specialists and other personnel appointed under relevant provisions of title 38. The Senate amendment, but not the House bill, would require coordination of such information and outreach efforts with the Small Business Administration and with the Department of Education, would require the administering agencies to assist veterans and employers in completing applications and certifications, and would require the administering agencies to endeavor to achieve an equitable regional distribution of the limited training funds available.

The compromise agreement (section 15) would require the Administrator and the Secretary of Labor to conduct jointly an outreach and public information program directed to both veterans and employers, as well as to educational institutions and labor unions, and would assign to the Secretary of Labor primary responsibility for promoting the development of employment and job training opportunities. It would require the Administrator and the Secretary to coordinate outreach and public information activities with other job counseling, placement, job development, and other services available through the VA and the Department of Labor, as well as with similar services offered by other public agencies and organizations (including Federal agencies).

It would require the Administrator of Veterans' Affairs and the Secretary of Labor to make available sufficient personnel for facilitating effective implementation and to provide assistance to veterans and employers making applications and completing certifications. Further, it would require the Secretary to make maximum use of personnel currently available through the Office of the Assistant Secretary for Veterans' Employment and resources under the Job Training Partnership Act. Finally, the Secretary would be required to request and obtain certain information from the Small Business Administration in order to promote maximum training opportunities for veterans.

The Senate amendment (new section 2110(b)), but not the House bill, would require efforts to achieve an equitable regional distribution of training opportunities.

The compromise agreement does not contain this provision. However, the Committees note their belief that it would be useful for consideration to be given to developing a mechanism, if feasible, for equitable distribution.

AUTHORIZATION OF APPROPRIATIONS

The House bill (section 19) would authorize the appropriation to the VA of $25 million for fiscal year 1983, $150 million for fiscal year 1984, and $150 million for fiscal year 1985, to carry out the House bill.

The Senate amendment (section 102) would authorize the appropriation to the VA of a total of $150 million for the purpose of making payments to employers under the Senate amendment.

The compromise agreement (section 16) would authorize the appropriation of $150 million for each of fiscal years 1984 and 1985 for the purpose of making payments under the compromise agreement, to remain available until September 30, 1986. The Committees note that these amounts have been specifically approved by the Congress for the purpose, in H. Con. 91, the First Concurrent Resolution on the Budget for Fiscal Year 1984, and that such amounts have been set apart in that resolution from other amounts provided for in Function 700 for veterans' benefits and services generally.

The Committees expect that, if additional personnel ceilings and funds are necessary for the effective implementation of the provisions of the compromise agreement, the VA will request such additional ceilings and funds.

TERMINATION OF PROGRAM

The House bill program would (under section 18) be open to new veteran applicants during the 15-month period beginning July 1, 1983, and ending September 30, 1984. No assistance would be authorized to be paid after September 30, 1985.

The Senate amendment program would (under new section 2112) be open to new veteran applicants during the 12-month period beginning October 1, 1983, and ending September 30, 1984. No assistance would be authorized to be paid for any program commencing after December 31, 1984. The Senate amendment (section 101(c)) would also provide that, in the event that funds are not both appropriated and made available by the Office of Managment and Budget (OMB) on or before the effective date, October 1, 1983, the termination dates for the program would be extended by periods equal to the period beginning October 1, 1983, and ending on the date funds are made available by OMB.

The compromise agreement (section 17) follows the Senate amendment.

EXPANSION OF TARGETED DELIMITING DATE EXTENSION

The House bill (section 13), but not the Senate amendment, would permit veterans, in lieu of participating in a program of job training, to pursue at an educational institution approved under chapter 34 of title 38 a full-time program of training with a vocational objective or a full-time associate degree program with a vocational objective. Such programs would be required to be of at least six-months duration and in an employment field where it is found that there is a specific level of probability of long-term employment. Payments for periods of such training would be made monthly to reimburse the veteran for the cost of tuition, fees, books, supplies, and equipment, but could not exceed $500 a month. Not more than $25 million could be obligated for such a program in any fiscal year.

The compromise agreement (section 18) would authorize the VA to provide educational assistance, using up to $25 million of funds appropriated under the compromise agreement, for the pursuit of an associate degree program (meeting the applicable title 38 requirements for such degree programs) with a predominantly vocational content. This assistance would be in the same amounts and be available under the same terms and conditions as are applicable to the pursuit of vocational objective courses under the targeted delimiting date extension provisions (section 1662(a)(3) of title 38) that were enacted in Public Law 97-72 and amended by Public Law 97-306 to provide certain Vietnam-era veterans whose GI Bill eligibility periods have expired a further opportunity to use their GI Bill benefits for vocational training. Thus, such assistance could be made available, until not later than December 31, 1984, for all Vietnam-era veterans who ever established GI Bill eligibility under chapter 34 of title 38 except in those cases in which it is determined that the veteran is not in need of the course involved in order to obtain a reasonably stable employment situation consistent with the veteran's abilities, aptitudes, and interests.

A ceiling of $25 million of the total of the amounts appropriated under section 17 for both fiscal years 1984 and 1985 would be placed on expenditures for such assistance; no statutory minimum would be established for such expenditures.

This assistance—as in the case of GI Bill educational assistance and contrasted with training assistance in connection with veterans' participation in programs of job training under the compromise agreement (which is payable to veterans' employers)—would be payable to veterans.

EFFECTIVE DATE

The House bill would (under section 19) take effect on July 1, 1983. The amendments to title 38, United States Code, that the Senate amendment would make to add a new chapter 44 would (under section 102) take effect on October 1, 1983.

The compromise agreement (section 19) has an October 1, 1983, effective date.

The Committees intend that the VA and the Department of Labor develop now the necessary regulations and procedures for implementing this legislation and expect that the entire $150 million authorized for fiscal year 1984 will be appropriated in the continuing resolution for fiscal year 1984. If the VA and the Department thus make the necessary preparations and funds are so appropriated, the program could begin on or about October 1, 1983.

VAREC REORGANIZATION

The Senate amendment, but not the House bill, would exempt the planned administrative reorganization of the Veterans' Administration Rehabilitation Engineering Center (VAREC) from the requirement, established under section 210(b)(2)(A) of title 38, that such reorganizations be proposed in a detailed report submitted to the appropriate Committees of Congress not later than the date that the President's budget is transmitted and not commence until the following October 1.

The compromise agreement does not contain this provision.

Mr. BAKER. Mr. President, I move that the Senate concur in the amendments of the House.

The motion was agreed to.

CONSOLIDATION AND REENACTING CERTAIN MARINE SAFETY AND SEAMAN'S WELFARE LAWS

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 46.

The PRESIDING OFFICER (Mr. HECHT) laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 46) entitled "An Act to revise, consolidate, and enact certain laws relating to vessels and seamen as subtitle II of title 46, United States Code "Shipping", do pass with the following amendment:

Strike all after the enacting clause and insert the following:

S. 46

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SUBTITLE II OF TITLE 46, UNITED STATES CODE

SECTION 1. Certain general and permanent laws of the United States, related to vessels and seamen, are revised, consolidated, and enacted as title 46, United States Code, "Shipping", as follows:

TITLE 46—SHIPPING

PART A—GENERAL PROVISIONS

CHAPTER 21—GENERAL

§ 2101. General definitions

In this subtitle—

(1) "associated equipment"—

(A) means—

(i) a system, accessory, component, or appurtenance of a recreational vessel; or

(ii) a marine safety article intended for use on board a recreational vessel; but

(B) does not include radio equipment.

(2) "barge" means a nonself-propelled vessel.

(3) "Boundary Line" means a line established under section 2(b) of the Act of February 19, 1895 (33 U.S.C. 151).

(4) "Coast Guard" means the organization established and continued under section 1 of title 14.

(5) "commercial service" includes any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.

(6) "consular officer" means an officer or employee of the United States Government designated under regulations to grant visas.

(7) "crude oil" means a liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

(8) "crude oil tanker" means a tanker engaged in the trade of carrying crude oil.

(9) "discharge", when referring to a substance discharged from a vessel, includes spilling, leaking, pumping, pouring, emitting, emptying, or dumping, however caused.

(10) "documented vessel" means a vessel for which a certificate of documentation has been issued under chapter 121 of this title.

(11) "fisheries" includes planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation at a place in the fishery conservation zone established by section 101 of the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1811).

(12) "foreign vessel" means a vessel of foreign registry or operated under the authority of a country except the United States.

(13) "freight vessel" means a motor vessel of more than 15 gross tons that carries freight for hire, except an oceanographic research vessel or an offshore supply vessel.

(14) "hazardous material" means a liquid material or substance that is—

(A) flammable or combustible;

(B) designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(C) designated a hazardous material under section 104 of the Hazardous Material Transportation Act (49 U.S.C. 1803);

(15) "marine environment" means—

(A) the navigable waters of the United States and the land and resources in and under those waters;

(B) the waters and fishery resources of an area over which the United States asserts exclusive fishery management authority;

(C) the seabed and subsoil of the outer Continental Shelf of the United States, the resources of the Shelf, and the waters superjacent to the Shelf; and

(D) the recreational, economic, and scenic values of the waters and resources referred to in subclauses (A)-(C) of this clause.

(16) "motor vessel" means a vessel propelled by machinery other than steam.

(17) "nautical school vessel" means a vessel operated by or in connection with a nautical school.

(18) "oceanographic research vessel" means a vessel that the Secretary finds is being employed only in instruction in oceanography or limnology, or both, or only in oceanographic or limnological research, including those studies about the sea such as seismic, gravity meter, and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research.

(19) "offshore supply vessel" means a motor vessel of more than 15 gross tons but less than 500 gross tons that regularly carries goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources and is not a small passenger vessel.

(20) "oil" includes oil of any type or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes except dredged spoil.

(21) "passenger"—

(A) on a passenger vessel, means an individual carried on the vessel except—

(i) the master; or

(ii) a crewmember.

(B) on a small passenger vessel, means an individual carried on the vessel except—

(i) the owner or representative of the owner;

(ii) the master or a crewmember engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for services;

(iii) an employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter;

(iv) an employee of the demise charterer of the vessel engaged in the business of the demise charterer;

(v) a guest on board a vessel that is being operated only for pleasure, or a guest on board a sailing school vessel, who has not contributed consideration for carriage on board;

(vi) an individual on board a towing vessel of at least 50 gross tons who has not contributed consideration for carriage on board; or

(vii) a sailing school instructor or sailing school student.

(C) on an offshore supply vessel, means an individual carried on the vessel except—

(i) the owner;

(ii) a representative of the owner;

(iii) the master;

(iv) a crewmember engaged in the business of the vessel who has not contributed consideration for carriage on board and who is paid for services on board;

(v) an employee of the owner, or of a subcontractor to the owner, engaged in the business of the owner;

(vi) a charterer of the vessel;

(vii) a person with the same relationship to a charterer as a person in subclause (ii) or (v) of this subclause has to an owner;

(viii) a person employed in a phase of exploration, exploitation, or production of offshore mineral or energy resources served by the vessel; or

(ix) a guest who has not contributed consideration for carriage on board.

(D) on an uninspected passenger vessel, means an individual carried on the vessel except—

(i) the owner or representative of the owner;

(ii) the managing operator;

(iii) a crewmember engaged in the business of the vessel who has not contributed consideration for carriage on board and who is paid for services on board; or

(iv) a guest on board a vessel that is being operated only for pleasure who has not contributed consideration for carriage on board.

(22) "passenger vessel" means a vessel of at least 100 gross tons carrying at least one passenger for hire.

(23) "product carrier" means a tanker engaged in the trade of carrying oil except crude oil.

(24) "public vessel" means a vessel that—

(A) is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and

(B) is not engaged in commercial service.

(25) "recreational vessel" means a vessel—

(A) being manufactured or operated primarily for pleasure; or

(B) leased, rented, or chartered to another for the latter's pleasure.

(26) "recreational vessel manufacturer" means a person engaged in the manufacturing, construction, assembly, or importation of recreational vessels, components, or associated equipment.

(27) "sailing instruction" means teaching, research, and practical experience in operating vessels propelled primarily by sail and may include any subject related to that operation and to the sea, including seamanship, navigation, oceanography, other nautical and marine sciences, and maritime history and literature.

(28) "sailing school instructor" means an individual who is on board a sailing school vessel to provide sailing instruction, but does not include an operator or crewmember who is among those required to be on board the vessel to meet a requirement established under part F of this subtitle.

(29) "sailing school student" means an individual who is on board a sailing school vessel to receive sailing instruction.

(30) "sailing school vessel" means a vessel—

(A) that is less than 500 gross tons;

(B) carrying at least 6 individuals who are sailing school instructors or sailing school students;

(C) principally equipped for propulsion by sail, even if the vessel has an auxiliary means of propulsion; and

(D) owned or demise chartered, and operated by an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) and exempt from tax under section 501(a) of that Code, or by a State or political subdivision of a State, during times that the vessel is operated by the organization, State, or political subdivision only for sailing instruction.

(31) "scientific personnel" means individuals on board an oceanographic research vessel only to engage in scientific research, or to instruct or receive instruction in oceanography or limnology.

(32) "seagoing barge" means a non-self-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line.

(33) "seagoing motor vessel" means a motor vessel of at least 300 gross tons making voyages beyond the Boundary Line.

(34) "Secretary" means the head of the department in which the Coast Guard is operating.

(35) "small passenger vessel" means a vessel of less than 100 gross tons carrying more than 6 passengers (as defined in clause (21) (B) and (C) of this section).

(36) "State" means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

(37) "steam vessel" means a vessel propelled in whole or in part by steam, except a recreational vessel of not more than 40 feet in length.

(38) "tanker" means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces.

(39) "tank vessel" means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(A) is a vessel of the United States;

(B) operates on the navigable waters of the United States; or

(C) transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

(40) "towing vessel" means a commercial vessel engaged in or intending to engage in the service of pulling, pushing, or hauling along side, or any combination of pulling, pushing, or hauling along side.

(41) "undocumented" means not having and not required to have a document issued under chapter 121 of this title.

(42) "uninspected passenger vessel" means an uninspected vessel carrying not more than 6 passengers.

(43) "uninspected vessel" means a vessel not subject to inspection under section 3301 of this title that is not a recreational vessel.

(44) "United States", when used in a geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

(45) "vessel" has the same meaning given that term in section 3 of title 1.

(46) "vessel of the United States" means a vessel documented or numbered under the laws of the United States.

§ 2102. Limited definitions

In chapters 43 and 123 of this title and part I of this subtitle—

(1) "eligible State" means a State that has a State recreational boating safety and facilities improvement program accepted by the Secretary.

(2) "State" and "United States", in addition to their meanings under section 2101 (36) and (44) of this title, include the Trust Territory of the Pacific Islands.

(3) "State recreational boating facilities improvement program"—

(A) means a program to develop or improve public facilities that establish or add to public access to the waters of the United States to improve their suitability for recreational boating, including ancillary facilities necessary to ensure the safe use of those facilities; and

(B) includes acquiring title or an interest in riparian or submerged land, and the capital improvement of riparian or submerged land, to increase public access to the waters of the United States.

(4) "State recreational boating safety and facilities improvement program" means a State recreational boating safety program, or a State recreational boating facilities improvement program, or both.

(5) "State recreational boating safety program" means education, assistance, and enforcement activities conducted for marine casualty prevention, reduction, and reporting for recreational boating.

§ 2103. Superintendence of the merchant marine

The Secretary has general superintendence over the merchant marine of the United States and of merchant marine personnel insofar as the enforcement of this subtitle is concerned and insofar as those vessels and personnel are not subject, under other law, to the supervision of another official of the United States Government. In the interests of marine safety and seamen's welfare, the Secretary shall enforce this subtitle and shall carry out correctly and uniformly administer this subtitle and regulations prescribed under this subtitle.

§ 2104. Delegation

(a) The Secretary may delegate the duties and powers conferred by this subtitle to any officer, employee, or member of the Coast Guard, and may provide for the subdelegation of those duties and powers.

(b) When this subtitle authorizes an officer or employee of the Customs Service to act in place of a Coast Guard official, the Secretary may designate that officer or employee subject to the approval of the Secretary of the Treasury.

§ 2105. Report

The Secretary shall provide for the investigation of the operation of this subtitle and of all laws related to marine safety, and shall require that a report be made to the Secretary annually about those matters that may require improvement or amendment.

§ 2106. Liability in rem

When a vessel is made liable in rem under this subtitle, the vessel may be libeled and proceeded against in a district court of the United States in which the vessel is found.

§ 2107. Civil penalty procedures

(a) After notice and an opportunity for a hearing, a person found by the Secretary to have violated this subtitle or a regulation prescribed under this subtitle for which a civil penalty is provided, is liable to the United States Government for the civil penalty provided. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) The Secretary may compromise, modify, or remit, with or without consideration, a civil penalty under this subtitle until the assessment is referred to the Attorney General.

(c) If a person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

§ 2108. Refund of penalties

The Secretary may refund or remit a civil penalty collected under this subtitle if—

(1) application has been made for refund or remission of the penalty within one year from the date of payment; and

(2) the Secretary finds that the penalty was unlawfully, improperly, or excessively imposed.

§ 2109. Public vessels

This subtitle does not apply to a public vessel of the United States. However, this subtitle does apply to a vessel (except a Coast Guard or a Saint Lawrence Seaway Development Corporation vessel) owned or operated by the Department of Transportation or by any corporation organized or controlled by the Department.

§ 2110. Fees prohibited

Fees may not be charged or collected by the Secretary for services provided for in this subtitle related to the engagement and discharge of seamen, the inspection and examination of vessels, the licensing of masters, mates, pilots, and engineers, and the measurement or documentation of vessels, except when specifically provided for in this subtitle.

§ 2111. Pay for overtime services

(a) The Secretary may prescribe a reasonable rate of extra pay for overtime services of civilian officers and employees of the Coast Guard required to remain on duty between 5 p.m. and 8 a.m., or on Sundays or holidays, to perform services related to—

(1) the inspection of vessels or their equipment;

(2) the engagement and discharge of crews of vessels;

(3) the measurement of vessels; and

(4) the documentation of vessels.

(b) Except for Sundays and holidays, the overtime rate provided under subsection (a) of this section is one-half day's additional pay for each 2 hours of overtime (or part of 2 hours of at least one hour). The total extra pay may be not more than 2 and one-half days' pay for any one period from 5 p.m. to 8 a.m.

(c) The overtime rate provided under subsection (a) of this section for Sundays and holidays is 2 additional days' pay.

(d) The owner, charterer, managing operator, agent, master, or individual in charge of the vessel shall pay the amount of the overtime pay provided under this section to the official designated by regulation. The official shall deposit the amount paid to the Treasury as miscellaneous receipts. Payment to the officer or employee entitled to the pay shall be made from the annual appropriations for salaries and expenses of the Coast Guard.

(e) The overtime pay provided under this section shall be paid if the authorized officers and employees have been ordered to report for duty and have reported, even if services requested were not performed.

§ 2112. Authority to change working hours

In a port at which the customary working hours begin before 8 a.m. or end after 5 p.m., the Secretary may regulate the working hours of the officers and employees referred to in section 2111 of this title so that those hours conform to the prevailing working hours of the port. However—

(1) the total period for which overtime pay may be required under section 2111 of this title may not be more than 15 hours between any 2 periods of ordinary working hours on other than Sundays and holidays;

(2) the length of the working day for the officers and employees involved may not be changed; and

(3) the rate of overtime pay may not be changed.

§ 2113. Authority to exempt certain vessels

If the Secretary decides that the application of a provision of part B or F of this subtitle is not necessary in performing the mission of a vessel engaged in excursions or an oceanographic research vessel, the Secretary by regulation may—

(1) for an excursion vessel, issue a special permit specifying the conditions of operation and equipment; and

(2) exempt the oceanographic research vessel from that provision under conditions the Secretary may specify.

CHAPTER 23—OPERATION OF VESSELS GENERALLY

§ 2301. Application

This chapter applies to a vessel operated on waters subject to the jurisdiction of the United States and, for a vessel owned in the United States, on the high seas.

§ 2302. Penalties for negligent operations

(a) A person operating a vessel in a negligent manner that endangers the life, limb, or property of a person is liable to the United States Government for a civil penalty of not more than $1,000.

(b) A person operating a vessel in a grossly negligent manner that endangers the life, limb, or property of a person shall be fined not more than $5,000, imprisoned for not more than one year, or both.

(c) For a penalty imposed under this section, the vessel also is liable in rem unless the vessel is—

(1) owned by a State or a political subdivision of a State;

(2) operated principally for governmental purposes; and

(3) identified clearly as a vessel of that State or subdivision.

§ 2303. Duties related to marine casualty assistance and information

(a) The master or individual in charge of a vessel involved in a marine casualty shall—

(1) render necessary assistance to each individual affected to save that affected individual from danger caused by the marine casualty, so far as the master or individual in charge can do so without serious danger to the master's or individual's vessel or to individuals on board; and

(2) give the master's or individual's name and address and identification of the vessel to the master or individual in charge of any other vessel involved in the casualty, to any individual injured, and to the owner of any property damaged.

(b) An individual violating this section or a regulation prescribed under this section shall be fined not more than $1,000 or imprisoned for not more than 2 years. The vessel also is liable in rem to the United States Government for the fine.

(c) An individual complying with subsection (a) of this section or gratuitously and in good faith rendering assistance at the scene of a marine casualty without objection by an individual assisted, is not liable for damages as a result of rendering assistance or for an act or omission in providing or arranging salvage, towage, medical treatment, or other assistance when the individual acts as an ordinary, reasonable, and prudent individual would have acted under the circumstances.

§ 2304. Duty to provide assistance at sea

(a) A master or individual in charge of a vessel shall render assistance to any individual found at sea in danger of being lost, so far as the master or individual in charge can do so without serious danger to the master's or individual's vessel or individuals on board.

(b) A master or individual violating this section shall be fined not more than $1,000, imprisoned for not more than 2 years, or both.

§ 2305. Injunctions

(a) The district courts of the United States have jurisdiction to enjoin the negligent operation of vessels prohibited by this chapter on the petition of the Attorney General for the United States Government.

(b) When practicable, the Secretary shall—

(1) give notice to any person against whom an action for injunctive relief is considered under this section an opportunity to present that person's views; and

(2) except for a knowing and willful violation, give the person a reasonable opportunity to achieve compliance.

(c) The failure to give notice and opportunity to present views under subsection (b) of this section does not preclude the court from granting appropriate relief.

PART B—INSPECTION AND REGULATION OF VESSELS

CHAPTER 31—GENERAL

Sec.
3101. Authority to suspend inspection.

§ 3101. Authority to suspend inspection

When the President decides that the needs of foreign commerce require, the President may suspend a provision of this part for a foreign-built vessel registered as a vessel of the United States on conditions the President may specify.

CHAPTER 33—INSPECTION GENERALLY

Sec.
3301. Vessels subject to inspection.
3302. Exemptions.
3303. Reciprocity for foreign vessels.
3304. Carrying individuals in addition to crew.
3305. Scope and standards of inspection.
3306. Regulations.
3307. Frequency of inspection.
3308. Examinations.
3309. Certificate of inspection.
3310. Records of certification.
3311. Certificate of inspection required.
3312. Display of certificate of inspection.
3313. Compliance with certificate of inspection.
3314. Expiration of certificate of inspection.
3315. Disclosure of defects and protection of informants.
3316. United States classification societies.
3317. Fees.
3318. Penalties.

§ 3301. Vessels subject to inspection

The following categories of vessels are subject to inspection under this part:

(1) freight vessels.
(2) nautical school vessels.
(3) offshore supply vessels.
(4) passenger vessels.
(5) sailing school vessels.
(6) seagoing barges.
(7) seagoing motor vessels.
(8) small passenger vessels.
(9) steam vessels.
(10) tank vessels.

§ 3302. Exemptions

(a) A vessel is not excluded from one category only because the vessel is—

(1) included in another category of section 3301 of this title; or

(2) excluded by this section from another category of section 3301 of this title.

(b) A motor vessel engaged in fishing as a regular business, including oystering, clamming, crabbing, or the kelp or sponge industry, is exempt from section 3301 (1), (4), and (7) of this title.

(c)(1) Before January 1, 1988, a motor vessel is exempt from section 3301 (1), (4), and (7) of this title if the vessel is not more than 500 gross tons and—

(A) is a cannery tender or a fishing tender in the salmon or crab fisheries of Alaska, Oregon, and Washington; and

(B) only carries cargo to or from vessels in those fisheries or a facility used in processing or assembling fishery products, or transports cannery or fishing personnel to or from operating locations.

(2) Before January 1, 1988, a vessel is exempt from section 3301 (1), (4), (6), and (7) of this title if the vessel is not more than 5,000 gross tons and is used only in processing and assembling fishery products in the fisheries of Alaska, Oregon, and Washington.

(d)(1) A motor vessel of less than 150 gross tons, constructed before August 23, 1958, is not subject to inspection under section 3301(1) of this title if the vessel is owned or demise chartered to a cooperative or association that only transports cargo owned by at least one of its members on a nonprofit basis between places within the waters of—

(A) southeastern Alaska shoreward of the Boundary Line; or

(B) southeastern Alaska shoreward of the Boundary Line and—

(i) Prince Rupert, British Columbia; or

(ii) waters of Washington shoreward of the Boundary Line, via sheltered waters, as defined in article I of the treaty dated December 9, 1933, between the United States and Canada defining certain waters as sheltered waters.

(2) The transportation authorized under this subsection is limited to and from places not receiving annual weekly transportation service from any part of the United States by an established water common carrier. However, the limitation does not apply to transporting cargo of a character not accepted for transportation by that carrier.

(e) A vessel laid up, dismantled, or out of commission is exempt from inspection.

(f) Section 3301 (4) and (8) of this title does not apply to an oceanographic research vessel because it is carrying scientific personnel.

(g)(1) Except when compliance with major structural or major equipment requirements is necessary to remove an especially hazardous condition, an offshore supply vessel is not subject to regulations or standards for those requirements if the vessel—

(A) was operating as an offshore supply vessel before January 2, 1979; or

(B) was contracted for before January 2, 1979, and entered into service as an offshore supply vessel before October 6, 1980.

(2) After December 31, 1988, this subsection does not apply to an offshore supply vessel that is at least 20 years of age.

(h) An offshore supply vessel operating on January 1, 1979, under a certificate of inspection issued by the Secretary, is subject to an inspection standard or requirement only if the standard or requirement could have been prescribed for the vessel under authority existing under law on October 5, 1980.

(i)(1) The Secretary may issue a permit exempting a vessel from any part of the requirements of this part for vessels transporting cargo, including bulk fuel, from one place in Alaska to another place in Alaska only if the vessel—

(A) is not more than 300 gross tons;

(B) is in a condition that does not present an immediate threat to the safety of life or the environment; and

(C) was operating in the waters off Alaska as of June 1, 1976, or the vessel is a replacement for a vessel that was operating in the waters off Alaska as of June 1, 1976, if the vessel being replaced is no longer in service.

(2) Except in a situation declared to be an emergency by the Secretary, a vessel operating under a permit may not transport cargo to or from a place if the cargo could be transported by another commercial vessel that is reasonably available and that does not require exemptions to operate legally or if the cargo could be readily transported by overland routes.

(3) A permit may be issued for a specific voyage or for not more than one year. The permit may impose specific requirements about the amount or type of cargo to be carried, manning, the areas or specific routes over which the vessel may operate, or other similar matters. The duration of the permit and restrictions contained in the permit shall be at the sole discretion of the Secretary.

(4) A designated Coast Guard official who has reason to believe that a vessel issued a permit is in a condition or is operated in a manner that creates an immediate threat to the safety of life or the environment or is operated in a manner that is inconsistent with the terms of the permit, may direct the master or individual in charge to take immediate and reasonable steps to safeguard life and the environment, including directing the vessel to a port or other refuge.

(5) If a vessel issued a permit creates an immediate threat to the safety of life or the environment, or is operated in a manner inconsistent with the terms of the permit or the requirements of paragraph (2) of this subsection, the permit may be revoked. The owner, charter, managing operator, agent, master, or individual in charge of a vessel issued a permit, that willfully permits the vessel to be operated, or operates, the vessel in a manner inconsistent with the terms of the permit, is liable to the United States Government for a civil penalty of not more than $1,000.

(j) Notwithstanding another provision of this chapter, the Secretary is not required to inspect or prescribe regulations for a nautical school vessel of not more than 15 gross tons—

(1) when used in connection with a course of instruction dealing with any aspect of maritime education or study; and

(2) operated by—

(A) the United States Merchant Marine Academy; or

(B) a State maritime academy assisted under section 1304 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295(c)).

§ 3303. Reciprocity for foreign vessels

(a) Except as provided in chapter 37 of this title, a foreign vessel of a country having inspection laws and standards similar to those of the United States and that has an unexpired certificate of inspection issued by proper authority of its respective country, is subject only to an inspection to ensure that the condition of the vessel's propulsion equipment and lifesaving equipment are as stated in its current certificate of inspection. A foreign country is considered to have inspection laws and standards similar to those of the United States when it is a party to an International Convention for Safety of Life at Sea to which the United States Government is currently a

party. A foreign certificate of inspection may be accepted as evidence of lawful inspection only when presented by a vessel of a country that has by its laws accorded to vessels of the United States visiting that country the same privileges accorded to vessels of that country visiting the United States.

(b) The Secretary shall collect and pay to the Treasury the same fees for the inspection of foreign vessels carrying passengers from the United States that a foreign country charges vessels of the United States trading to the ports of that country. The Secretary may waive at any time the collection of the fees on notice of the proper authorities of any country concerned that the collection of fees for the inspection of vessels of the United States has been discontinued.

§ 3304. Carrying individuals in addition to crew

(a) A documented vessel carrying cargo that carries not more than 12 individuals in addition to the crew on international voyages, or not more than 16 individuals in addition to the crew on other voyages, is not subject to inspection as a passenger vessel or a small passenger vessel.

(b) Before an individual in addition to the crew is carried on a vessel as permitted by this section, the owner, charterer, managing operator, agent, master, or individual in charge of the vessel first shall notify the individual of the presence on board of dangerous articles as defined by law, and of other conditions or circumstances that would constitute a risk of safety to the individual on board.

(c) The privilege authorized by this section applies to a vessel of a foreign country that affords a similar privilege to vessels of the United States in trades not restricted to vessels under its own flag.

§ 3305. Scope and standards of inspection

(a) The inspection process shall ensure that a vessel subject to inspection—

(1) is of a structure suitable for the service in which it is to be employed;

(2) is equipped with proper appliances for lifesaving, fire prevention, and firefighting;

(3) has suitable accommodations for the crew, sailing school instructors, and sailing school students, and for passengers on the vessel if authorized to carry passengers;

(4) is in a condition to be operated with safety to life and property; and

(5) complies with applicable marine safety laws and regulations.

(b) If an inspection, or examination under section 3308 of this title, reveals that a life preserver, life-saving device, or firehose is defective and incapable of being repaired, the owner or master shall destroy the life preserver or firehose in the presence of the official conducting the inspection or examination.

(c) A nautical school vessel operated by a civilian nautical school shall be inspected like a small passenger vessel or a passenger vessel, depending on its tonnage.

§ 3306. Regulations

(a) To carry out this part and to secure the safety of individuals and property on board vessels subject to inspection, the Secretary shall prescribe necessary regulations to ensure the proper execution of, and to carry out, this part in the most effective manner for—

(1) the design, construction, alteration, repair, and operation of those vessels, including superstructures, hulls, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, boilers, unfired pressure vessels, piping, electric installations, and accommodations for passengers and crew, sailing school instructors, and sailing school students;

(2) lifesaving equipment and its use;

(3) firefighting equipment, its use, and precautionary measures to guard against fire;

(4) inspections and tests related to clauses (1)–(3) of this subsection; and

(5) the use of vessel stores and other supplies of a dangerous nature.

(b) Equipment subject to regulation under this section may not be used on any vessel without prior approval as prescribed by regulation.

(c) In prescribing regulations for sailing school vessels, the Secretary shall consult with representatives of the private sector having experience in the operation of vessels likely to be certificated as sailing school vessels. The regulations shall—

(1) reflect the specialized nature of sailing school vessel operations, and the character, design, and construction of vessels operating as sailing school vessels; and

(2) include requirements for notice to sailing school instructors and sailing school students about the specialized nature of sailing school vessels and applicable safety regulations.

(d) In prescribing regulations for nautical school vessels operated by the United States Merchant Marine Academy or by a State maritime academy (as defined in section 1302(3) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295a(3))), the Secretary shall consider the function, purpose, and operation of the vessels, their routes, and the number of individuals who may be carried on the vessels.

(e) When the Secretary finds it in the public interest, the Secretary may suspend or grant exemptions from the requirements of a regulation prescribed under this section related to lifesaving and firefighting equipment, muster lists, ground tackle and hawsers, and bilge systems.

(f) In prescribing regulations for offshore supply vessels, the Secretary shall consider the characteristics, methods of operation, and the nature of the service of offshore supply vessels.

§ 3307. Frequency of inspection

Each vessel subject to inspection under this part shall undergo an initial inspection for certification before being put into service. After being put into service—

(1) each passenger vessel and nautical school vessel shall be inspected at least once a year;

(2) each small passenger vessel, freight vessel or offshore supply vessel of less than 100 gross tons, and sailing school vessel shall be inspected at least once every 3 years; and

(3) any other vessel shall be inspected at least once every 2 years.

§ 3308. Examinations

In addition to inspections required by section 3307 of this title, the Secretary shall examine—

(1) each vessel subject to inspection at proper times to ensure compliance with law and regulations; and

(2) crewmember accommodations on each vessel subject to inspection at least once a month or when the vessel enters United States ports to ensure that the accommodations are—

(A) of the size required by law and regulations;

(B) properly ventilated and in a clean and sanitary condition; and

(C) equipped with proper plumbing and mechanical appliances required by law and regulations, and the appliances are in good working condition.

§ 3309. Certificate of inspection

(a) When an inspection under section 3307 of this title has been made and a vessel has been found to be in compliance with the requirements of law and regulations, a certificate of inspection, in a form prescribed by the Secretary, shall be issued to the vessel.

(b) The Secretary may issue a temporary certificate of inspection in place of a regular certificate of inspection issued under subsection (a) of this section.

§ 3310. Records of certification

The Secretary shall keep records of certificates of inspection of vessels and of all acts in the examination and inspection of vessels, whether of approval or disapproval.

§ 3311. Certificate of inspection required

A vessel subject to inspection under this part may not be operated without having on board a valid certificate of inspection issued under section 3309 of this title.

§ 3312. Display of certificate of inspection

The certificate of inspection issued to a vessel under section 3309 of this title shall be displayed, suitably framed, in a conspicuous place on the vessel. When it is not practicable to so display the certificate, it shall be carried in the manner prescribed by regulation.

§ 3313. Compliance with certificate of inspection

(a) During the term of a vessel's certificate of inspection, the vessel must be in compliance with its conditions, unless relieved by a suspension or an exemption granted under section 3306(e) of this title.

(b) When a vessel is not in compliance with its certificate or fails to meet a standard prescribed by this part or a regulation prescribed under this part—

(1) the owner, charterer, managing operator, agent, master, or individual in charge shall be ordered in writing to correct the noted deficiencies promptly;

(2) the Secretary may permit any repairs to be made at a place most convenient to the owner, charterer, or managing operator when the Secretary decides the repairs can be made with safety to those on board and the vessel;

(3) the vessel may be required to cease operating at once; and

(4) if necessary, the certificate shall be suspended or revoked.

(c) The vessel's certificate of inspection shall be revoked if a condition unsafe to life that is ordered to be corrected under this section is not corrected at once.

(d) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel whose certificate has been suspended or revoked shall be given written notice immediately of the suspension or revocation. The owner or master may appeal to the Secretary the suspension or revocation within 30 days of receiving the notice, as provided by regulations prescribed by the Secretary.

§ 3314. Expiration of certificate of inspection

(a) If the certificate of inspection of a vessel expires when the vessel is on a foreign voyage, the vessel may complete the voyage to a port of the United States within 30 days of the expiration of the certificate

without incurring the penalties for operating without a certificate of inspection.

(b) If the certificate of inspection would expire within 15 days of sailing on a foreign voyage from a United States port, the vessel shall secure a new certificate of inspection before sailing, unless the voyage is scheduled to be completed prior to the expiration date of the certificate. If a voyage scheduled to be completed in that time is not so completed, the applicable penalties may be enforced unless the failure to meet the schedule was beyond the control of the owner, charterer, managing operator, agent, master, or individual in charge of the vessel.

(c) When the certificate of inspection of a foreign vessel carrying passengers, operated on a regularly established line, expires at sea after leaving the country to which it belongs or when the vessel is in the United States, the Secretary may permit the vessel to sail on its regular route without further inspection than would have been required had the certificate not expired. This permission applies only when the vessel will be regularly inspected and issued a certificate before the vessel's next return to the United States.

§ 3315. Disclosure of defects and protection of informants

(a) Each individual licensed under part E of this subtitle shall assist in the inspection or examination under this part of the vessel on which the individual is serving, and shall point out defects and imperfections known to the individual in matters subject to regulations and inspection. The individual also shall make known to officials designated to enforce this part, at the earliest opportunity, any marine casualty producing serious injury to the vessel, its equipment, or individuals on the vessel.

(b) An official may not disclose the name of an individual providing information under this section, or the source of the information, to a person except a person authorized by the Secretary. An official violating this subsection is liable to disciplinary action under applicable law.

§ 3316. United States classification societies

(a) In carrying out this part, the Secretary may rely on reports, documents, and certificates issued by the American Bureau of Shipping or a similar United States classification society, or an agent of the Bureau or society.

(b) Each department, agency, and instrumentality of the United States Government shall recognize the Bureau as its agent in classifying vessels owned by the Government and in matters related to classification, as long as the Bureau is maintained as an organization having no capital stock and paying no dividends. The Secretary and the Secretary of Transportation each shall appoint one representative (except when the Secretary is the Secretary of Transportation, in which case the Secretary shall appoint both representatives) who shall represent the Government on the executive committee of the Bureau. The Bureau shall agree that the representatives shall be accepted by it as active members of the committee. The representatives shall serve without compensation, except for necessary traveling expenses.

(c)(1) To the maximum extent practicable, the Secretary may delegate to the Bureau or a similar United States classification society, or an agent of the Bureau or society, the inspection or examination, in the United States or in a foreign country, of a vessel documented or to be documented as a vessel of the United States. The Bureau, society, or agent may issue the certificate of inspection required by this part and other certificates essential to documentation.

(2) When an inspection or examination has been delegated under this subsection, the Secretary's delegate—

(A) shall maintain in the United States complete files of all information derived from or necessarily connected with the inspection or examination for at least 2 years after the vessel ceases to be certified; and

(B) shall permit access to those files at all reasonable times to any officer, employee, or member of the Coast Guard designated—

(i) as a marine inspector and serving in a position as a marine inspector; or

(ii) in writing by the Secretary to have access to those files.

(d) The Secretary also may make an agreement with or use the Bureau or a similar United States classification society, or an agent of the Bureau or society, for reviewing and approving plans required for issuing a certificate of inspection.

§ 3317. Fees

(a) The Secretary may prescribe by regulation fees for inspecting or examining a small passenger vessel or a sailing school vessel.

(b) When an inspection or examination under this chapter of a documented vessel is conducted at a foreign port or place at the request of the owner or managing operator of the vessel, the owner or operator shall reimburse the Secretary for the travel and subsistence expenses incurred by the personnel assigned to perform the inspection or examination. Amounts received as reimbursement for these expenses shall be credited to the appropriation for operating expenses of the Coast Guard.

§ 3318. Penalties

(a) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel operated in violation of this part or a regulation prescribed under this part, and a person violating a regulation that applies to a small passenger vessel, freight vessel of less than 100 gross tons, or sailing school vessel, are liable to the United States Government for a civil penalty of $1,000, except that when the violation involves operation of a barge, the penalty is $500. The vessel also is liable in rem for the penalty.

(b) A person that knowingly manufactures, sells, offers for sale, or possesses with intent to sell, any equipment subject to this part, and the equipment is so defective as to be insufficient to accomplish the purpose for which it is intended, shall be fined not more than $10,000, imprisoned for not more than 5 years, or both.

(c) A person that employs a means or device whereby a boiler may be subjected to a pressure greater than allowed by the terms of the vessel's certificate of inspection shall be fined not more than $2,000, imprisoned for not more than 5 years, or both.

(d) A person that deranges or hinders the operation of any machinery or device employed on a vessel to denote the state of steam or water in any boiler or to give warning of approaching danger, or permits the water level of any boiler when in operation of a vessel to fall below its prescribed low-water line, shall be fined not more than $2,000, imprisoned for not more than 5 years, or both.

(e) A person that alters, defaces, obliterates, removes, or destroys any plans or specifications required by and approved under a regulation prescribed under section 3306 of this title, with intent to deceive or impede any official of the United States in carrying out that official's duties, shall be fined not more than $2,000, imprisoned for not more than 2 years, or both.

(f) A person shall be fined not less than $1,000 but not more then $5,000, and imprisoned for not less than 2 years but not more then 5 years, if the person—

(1) forges or counterfeits with intent to make it appear genuine any mark or stamp prescribed for material to be tested and approved under section 3306 of this title or a regulation prescribed under section 3306;

(2) knowingly uses, affixes, or causes to be used or affixed, any such forged or counterfeited mark or stamp to or on material of any description;

(3) with fraudulent intent, possesses any such mark, stamp, or other device knowing it to be forged or counterfeited; or

(4) with fraudulent intent, marks or causes to be marked with the trademark or name of another, material required to be tested and approved under section 3306 of this title or a regulation prescribed under section 3306.

(g) A person shall be fined not more than $10,000, imprisoned for not more than one year, or both, if the person—

(1) interferes with the inspection of a nautical school vessel;

(2) violates a regulation prescribed for a nautical school vessel;

(3) is an owner of a nautical school vessel operated in violation of this part; or

(4) is an officer or member of the board of directors of a school, organization, association, partnership, or corporation owning a nautical school vessel operated in violation of a regulation prescribed for a nautical school vessel.

(h) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel that fails to give the notice required by section 3304(b) of this title is liable to the United States Government for a civil penalty of not more than $500. The vessel also is liable in rem for the penalty.

CHAPTER 35—CARRIAGE OF PASSENGERS

Sec.
3501. Number of passengers.
3502. List or count of passengers.
3503. Fire-retardant materials.
3504. Notification to passengers.
3505. Prevention of departure.
3506. Copies of laws.

§ 3501. Number of passengers

(a) Each certificate of inspection issued to a vessel carrying passengers (except a ferry), shall include a statement on the number of passengers that the vessel is permitted to carry.

(b) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel is liable to a person suing them for carrying more passengers than the number of passengers permitted by the certificate of inspection in an amount equal to—

(1) passage money; and

(2) $100 for each passenger in excess of the number of passengers permitted.

(c) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel that knowingly violates subsection (b) of this section also shall be fined not more than $100, imprisoned for not more than 30 days, or both.

(d) The vessel also is liable in rem for a penalty under this section.

(e) An offshore supply vessel may not carry passengers except in an emergency.

§ 3502. List or count of passengers

(a) The owner, charterer, managing operator, master, or individual in charge of the following categories of vessels carrying passengers shall keep a correct list of passengers received and delivered from day to day:

(1) vessels arriving from foreign ports (except at United States Great Lakes ports from Canadian Great Lakes ports).

(2) seagoing vessels in the coastwise trade.

(3) passenger vessels making voyages of more than 300 miles on the Great Lakes except from a Canadian to a United States port.

(b) The master of a vessel carrying passengers (except a vessel listed in subsection (a) of this section) shall keep a correct count of all passengers received and delivered.

(c) Lists and counts required under this section shall be open to the inspection of designated officials of the Coast Guard and the Customs Service at all times. The total number of passengers shall be provided to the Coast Guard when requested.

(d) This section applies to a foreign vessel arriving at a United States port.

(e) The owner, charterer, managing operator, master, or individual in charge of a passenger vessel failing to make a list or count of passengers as required by this section is liable to the United States Government for a civil penalty of $100. The vessel also is liable in rem for the penalty.

§ 3503. Fire-retardant materials

A passenger vessel of the United States having berth or stateroom accommodations for at least 50 passengers shall be granted a certificate of inspection only if the vessel is constructed of fire-retardant materials. Before November 1, 1988, this section does not apply to a vessel operating only on the inland rivers.

§ 3504. Notification to passengers

(a) A person selling passage on a foreign or domestic passenger vessel having berth or stateroom accommodations for at least 50 passengers and embarking passengers at United States ports for a coastwise or an international voyage shall notify each prospective passenger of the safety standards applicable to the vessel in a manner prescribed by regulation.

(b) All promotional literature or advertising through any medium of communication in the United States offering passage or soliciting passengers for ocean voyages anywhere in the world shall include information similar to the information described in subsection (a) of this section, and shall specify the registry of each vessel named, as a part of the advertisement or description of the voyage. Except for the inclusion of the country of registry of the vessel, this subsection does not apply to voyages by vessels meeting the safety standards described in section 3505 of this title.

(c) A person violating this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of not more than $10,000. If the violation involves the sale of tickets for passage, the owner, charterer, managing operator, agent, master, individual in charge, or any other person involved in each violation also is liable to the Government for a civil penalty of $500 for each ticket sold. The vessel on which passage is sold also is liable in rem for a violation of this section or a regulation prescribed under this section.

§ 3505. Prevention of departure

Notwithstanding section 3303(a) of this title, a foreign or domestic vessel of more than 100 gross tons having berth or stateroom accommodations for at least 50 passengers may not depart from a United States port with passengers who are embarked at that port, if the Secretary finds that the vessel does not comply with the standards stated in the International Convention for the Safety of Life at Sea to which the United States Government is currently a party.

§ 3506. Copies of laws

A master of a passenger vessel shall keep on board a copy of this subtitle, to be provided by the Secretary at reasonable cost. If the master fails to do so, the master is liable to the United States Government for a civil penalty of $200.

CHAPTER 37—CARRIAGE OF LIQUID BULK DANGEROUS CARGOES

Sec.
3701. Definitions.
3702. Application.
3703. Regulations.
3704. Coastwise trade vessels.
3705. Crude oil tanker minimum standards.
3706. Product carrier minimum standards.
3707. Tanker minimum standards.
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3709. Exemptions.
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3713. Prohibited acts.
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§ 3701. Definitions

In this chapter—

(1) "existing", when referring to a type of vessel to which this chapter applies, means a vessel that is not a new vessel.

(2) "major conversion" means a conversion of an existing vessel that substantially changes the dimensions or carrying capacity of the vessel or changes the type of vessel or substantially prolongs its life or that otherwise so changes the vessel that it is essentially a new vessel, as decided by the Secretary.

(3) "new", when referring to a type of vessel to which this chapter applies, means a vessel—

(A) for which the building contract is placed after June 1, 1979;

(B) in the absence of a building contract, the keel of which is laid, or which is at a similar stage of construction, after January 1, 1980;

(C) the delivery of which is after June 1, 1982; or

(D) that has undergone a major conversion under a contract made after June 1, 1979, or construction work that began after January 1, 1980, or was completed after June 1, 1982.

(4) "person" means an individual (even if not a citizen or national of the United States), a corporation, partnership, association, or other entity (even if not organized or existing under the laws of a State), the United States Government, a State or local government, a government of a foreign country, or an entity of one of those governments.

(5) "State", in addition to its meaning under section 2101(36) of this title, includes the Trust Territory of the Pacific Islands.

(6) "United States", in addition to its meaning under section 2101(44) of this title, includes the Trust Territory of the Pacific Islands.

§ 3702. Application

(a) Subject to subsections (b)-(e) of this section, this chapter applies to a tank vessel.

(b) This chapter does not apply to a documented vessel that would be subject to this chapter only because of the transfer of fuel from the fuel supply tanks of the vessel to offshore drilling or production facilities in the oil industry if the vessel is—

(1) not more than 500 gross tons;

(2) not a tanker; and

(3) in the service of oil exploitation.

(c) This chapter does not apply to a cannery tender, fishing tender, or fishing vessel of not more than 500 gross tons, used in the salmon or crab fisheries of Alaska, Oregon, or Washington, when engaged only in the fishing industry.

(d) This chapter does not apply to a vessel of not more than 5,000 gross tons used in processing and assembling fishery products of the fisheries of Alaska, Oregon, and Washington. However, the vessel is subject to regulation by the Secretary when carrying flammable or combustible liquid cargo in bulk.

(e) This chapter does not apply to a foreign vessel on innocent passage on the navigable waters of the United States.

§ 3703. Regulations

(a) The Secretary shall prescribe regulations for the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels to which this chapter applies, that may be necessary for increased protection against hazards to life and property, for navigation and vessel safety, and for enhanced protection of the marine environment. The Secretary may prescribe different regulations applicable to vessels engaged in the domestic trade, and also may prescribe regulations that exceed standards set internationally. Regulations prescribed by the Secretary under this subsection are in addition to regulations prescribed under other laws that may apply to any of those vessels. Regulations prescribed under this subsection shall include requirements about—

(1) superstructures, hulls, cargo holds or tanks, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, and boilers;

(2) the handling or stowage of cargo, the manner of handling or stowage of cargo, and the machinery and appliances used in the handling or stowage;

(3) equipment and appliances for lifesaving, fire protection, and prevention and mitigation of damage to the marine environment;

(4) the manning of vessels and the duties, qualifications, and training of the officers and crew;

(5) improvements in vessel maneuvering and stopping ability and other features that reduce the possibility of marine casualties;

(6) the reduction of cargo loss if a marine casualty occurs; and

(7) the reduction or elimination of discharges during ballasting, deballasting, tank cleaning, cargo handling, or other such activity.

(b) In prescribing regulations under subsection (a) of this section, the Secretary shall consider the types and grades of cargo permitted to be on board a tank vessel.

(c) In prescribing regulations under subsection (a) of this section, the Secretary shall establish procedures for consulting with, and receiving and considering the views of—

(1) interested departments, agencies, and instrumentalities of the United States Government;

(2) officials of State and local governments;

(3) representatives of port and harbor authorities and associations;

(4) representatives of environmental groups; and

(5) other interested parties knowledgeable or experienced in dealing with problems involving vessel safety, port and waterways safety, and protection of the marine environment.

§ 3704. Coastwise trade vessels

A segregated ballast tank, a crude oil washing system, or an inert gas system, required by this chapter or a regulation prescribed under this chapter, on a vessel entitled to engage in the coastwise trade under section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), shall be installed in the United States (except the trust territories). A vessel failing to comply with this section may not engage in the coastwise trade.

§ 3705. Crude oil tanker minimum standards

(a) A new crude oil tanker of at least 20,000 deadweight tons shall be equipped with—

(1) protectively located segregated ballast tanks;

(2) a crude oil washing system; and

(3) a cargo tank protection system consisting of a fixed deck froth system and a fixed inert gas system.

(b)(1) An existing crude oil tanker of at least 40,000 deadweight tons shall be equipped with—

(A) segregated ballast tanks; or

(B) a crude oil washing system.

(2) Compliance with paragraph (1) of this subsection may be delayed until June 1, 1985, for any tanker of less than 70,000 deadweight tons that has dedicated clean ballast tanks.

(c) An existing crude oil tanker of at least 20,000 deadweight tons but less than 40,000 deadweight tons, and at least 15 years of age, shall be equipped with segregated ballast tanks or a crude oil washing system before January 2, 1986, or the date on which the tanker reaches 15 years of age, whichever is later.

(d) An existing crude oil tanker of at least 20,000 deadweight tons shall be equipped with an inert gas system. However, for a crude oil tanker of less than 40,000 deadweight tons not fitted with high capacity tank washing machines, the Secretary may grant an exemption if the vessel's owner can show clearly that compliance would be unreasonable and impracticable due to the vessel's design characteristics.

(e) A crude oil tanker engaged in transferring oil from an offshore oil exploitation or production facility on the Outer Continental Shelf of the United States shall be equipped with segregated ballast tanks, or may operate with dedicated clean ballast tanks or special ballast arrangements. However, the tanker shall comply with other applicable minimum standards of this section.

§ 3706. Product carrier minimum standards

(a) A new product carrier of at least 30,000 deadweight tons shall be equipped with protectively located segregated ballast tanks.

(b) A new product carrier of at least 20,000 deadweight tons shall be equipped with a cargo tank protection system consisting of a fixed deck froth system and a fixed inert gas system or, if the product carrier carries dedicated products incompatible with the cargo tank protection system, an alternate protection system authorized by the Secretary.

(c) An existing product carrier of at least 40,000 deadweight tons shall be equipped with segregated ballast tanks or may operate with dedicated clean ballast tanks.

(d) An existing product carrier of at least 20,000 deadweight tons but less than 40,000 deadweight tons, and at least 15 years of age, shall be equipped with segregated ballast tanks or may operate with dedicated clean ballast tanks before January 2, 1986, or the date on which it reaches 15 years of age, whichever is later.

(e) An existing product carrier of at least 40,000 deadweight tons, or an existing product carrier of at least 20,000 deadweight tons but less than 40,000 deadweight tons that is fitted with high-capacity tank washing machines, shall be equipped with an inert gas system.

§ 3707. Tanker minimum standards

(a) A new tanker of at least 10,000 gross tons shall be equipped with—

(1) 2 remote steering gear control systems operable separately from the navigating bridge;

(2) the main steering gear control in the steering gear compartment;

(3) means of communications and rudder angle indicators on the navigating bridge, a remote steering gear control station, and the steering gear compartment;

(4) at least 2 identical and adequate power units for the main steering gear;

(5) an alternative and adequate power supply, either from an emergency source of electrical power or from another independent source of power located in the steering gear compartment; and

(6) means of automatic starting and stopping of power units with attendant alarms at all steering stations.

(b) An existing tanker of at least 10,000 gross tons shall be equipped with—

(1) 2 remote steering gear control systems operable separately from the navigating bridge;

(2) the main steering gear control in the steering gear compartment; and

(3) means of communications and rudder angle indicators on the navigating bridge, a remote steering gear control station, and the steering gear compartment.

§ 3708. Self-propelled tank vessel minimum standards

A self-propelled tank vessel of at least 10,000 gross tons shall be equipped with—

(1) a dual radar system with short-range and long-range capabilities, each with true-north features;

(2) an electronic relative motion analyzer that is at least functionally equivalent to equipment complying with specifications established by the Secretary of Transportation;

(3) an electronic position-fixing device;

(4) adequate communications equipment;

(5) a sonic depth finder;

(6) a gyrocompass; and

(7) up-to-date charts.

§ 3709. Exemptions

The Secretary may exempt a vessel from the minimum requirements established by sections 3704-3706 of this title for segregated ballast, crude oil washing, and dedicated clean ballast if the Secretary decides that shore-based reception facilities are a preferred method of handling ballast and that adequate facilities are readily available.

§ 3710. Evidence of compliance by vessels of the United States

(a) A vessel of the United States to which this chapter applies that has on board oil or hazardous material in bulk as cargo or cargo residue must have a certificate of inspection issued under this part, endorsed to indicate that the vessel complies with regulations prescribed under this chapter.

(b) Each certificate endorsed under this section is valid for not more than 24 months and may be renewed as specified by the Secretary. In appropriate circumstances, the Secretary may issue a temporary certificate valid for not more than 30 days. A certificate shall be suspended or revoked if the Secretary finds that the vessel does not comply with the conditions under which the certificate was issued.

§ 3711. Evidence of compliance by foreign vessels

(a) A foreign vessel to which this chapter applies may operate on the navigable waters of the United States, or transfer oil or hazardous material in a port or place under the jurisdiction of the United States, only if the vessel has been issued a certificate of compliance by the Secretary. The Secretary may issue the certificate only after the vessel has been examined and found to be in compliance with this chapter and regulations prescribed under this chapter. The Secretary may accept any part of a certificate, endorsement, or document, issued by the government of a foreign country under a treaty, convention, or other international agreement to which the United States is a party, as a basis for issuing a certificate of compliance.

(b) A certificate issued under this section is valid for not more than 24 months and may be renewed as specified by the Secretary. In appropriate circumstances, the Secretary may issue a temporary certificate valid for not more than 30 days.

(c) A certificate shall be suspended or revoked if the Secretary finds that the vessel does not comply with the conditions under which the certificate was issued.

§ 3712. Notification of noncompliance

The Secretary shall notify the owner, charterer, managing operator, agent, master, or individual in charge of a vessel found not to be in compliance with a regulation prescribed under this part and state how compliance may be achieved.

§ 3713. Prohibited acts

(a) A person may not—

(1) violate this chapter or a regulation prescribed under this chapter;

(2) refuse to permit any official, authorized by the Secretary to enforce this chapter, to board a vessel or to enter a shore area, place, or premises, under a person's control to make an inspection under this chapter; or

(3) refuse to obey a lawful directive issued under this chapter.

(b) A vessel to which this chapter applies may not—

(1) operate on the navigable waters of the United States or use a port or place subject to the jurisdiction of the United States when not in compliance with this chapter or a regulation prescribed under this chapter;

(2) fail to comply with a lawful directive issued under this chapter; or

(3) carry a type or grade of oil or hazardous material in bulk as cargo or cargo residue unless its certificate is endorsed to allow that carriage.

§ 3714. Inspection and examination

(a)(1) The Secretary shall have each vessel to which this chapter applies inspected or examined at least once each year.

(2) Each of those vessels that is more than 10 years of age shall undergo a special and detailed inspection of structural strength and hull integrity as specified by the Secretary.

(3) The Secretary may make contracts for conducting inspections or examinations in the United States and in foreign countries. An inspector conducting an inspection or examination under contract may not issue a certificate of inspection or a certificate of compliance, but the inspector may issue a temporary certificate.

(4) The Secretary shall prescribe by regulation reasonable fees for an inspection or examination conducted under this section outside the United States, or which, when involving a foreign vessel, is conducted under a contract authorized by paragraph (3) of this subsection. The owner, charter, or managing operator of a vessel inspected or examined by the Secretary is liable for the fees. Amounts received as fees shall be deposited in the Treasury.

(5) The Secretary may allow provisional entry of a vessel to conduct an inspection or examination under this chapter.

(b) Each vessel to which this chapter applies shall have on board those documents the Secretary considers necessary for inspection and enforcement, including documents listing—

(1) the type, grade, and approximate quantities of cargo on board;

(2) the shipper and consignee of the cargo;

(3) the places of origin and destination of the vessel; and

(4) the name of an agent in the United States authorized to accept service of legal process.

(c) Each vessel to which this chapter applies that operates in the United States shall have a person designated as authorized to accept service of legal process for the vessel.

§ 3715. Lightering

(a) A vessel may transfer oil or hazardous material in a port or place subject to the jurisdiction of the United States, when the cargo has been transferred from another vessel on the navigable waters of the United States or in the marine environment, only if—

(1) the transfer was conducted consistent with regulations prescribed by the Secretary; and

(2) both the delivering and receiving vessels had on board, at the time of transfer, a certificate of inspection or a certificate of compliance, as would have been required under section 3710 or 3711 of this title, had the transfer taken place in a port or place subject to the jurisdiction of the United States.

(b) The Secretary shall prescribe regulations to carry out subsection (a) of this section. The regulations shall include provisions on—

(1) minimum safe operating conditions, including sea state, wave height, weather, proximity to channels or shipping lanes, and other similar factors;

(2) the prevention of spills;

(3) equipment for responding to a spill;

(4) the prevention of any unreasonable interference with navigation or other reasonable uses of the high seas, as those uses are defined by treaty, convention, or customary international law;

(5) the establishment of lightering zones; and

(6) requirements for communication and prearrival messages.

§ 3716. Tank washings

(a) A vessel may not transfer cargo in a port or place subject to the jurisdiction of the United States if, before arriving, the vessel has discharged tank washings containing oil or hazardous material in preparation for loading at that port or place in violation of the laws of the United States or in a manner or quantities inconsistent with a treaty to which the United States is a party.

(b) The Secretary shall establish effective control and supervisory measures to carry out this section.

§ 3717. Marine safety information system

(a) The Secretary shall establish a marine safety information system that shall contain information about each vessel to which this chapter applies that operates on the navigable waters of the United States, or that transfers oil or hazardous material in a port or place under the jurisdiction of the United States. In acquiring this information, the Secretary shall make full use of publicly available information. The Secretary may by regulation require the vessel to provide information that the Secretary considers necessary to carry out this subsection, including—

(1) the name of each person with an ownership interest in the vessel;

(2) details of compliance with the financial responsibility requirements of applicable laws or regulations;

(3) registration information, including all changes in the name of the vessel;

(4) the history of marine casualties and serious repair problems of the vessel; and

(5) a record of all inspections and examinations of a vessel conducted under section 3714 of this title.

(b) On written request from the Secretary, the head of each department, agency, or instrumentality of the United States Government shall provide available information that the Secretary considers necessary to confirm the information received under subsection (a) of this section.

§ 3718. Penalties

(a)(1) A person violating this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $25,000. Each day of a continuing violation is a separate violation.

(2) Each vessel to which this chapter applies that is operated in violation of this chapter or a regulation prescribed under this chapter is liable in rem for a civil penalty under this subsection.

(b) A person willfully and knowingly violating this chapter or a regulation prescribed under this chapter shall be fined not more than $50,000, imprisoned for not more than 5 years, or both.

(c) Instead of the penalties provided by subsection (b) of this section, a person willfully and knowingly violating this chapter or a regulation prescribed under this chapter, and using a dangerous weapon, or engaging in conduct that causes bodily injury or fear of imminent bodily injury to an official authorized to enforce this chapter or a regulation prescribed under this chapter, shall be fined not more than $100,000, imprisoned for not more than 10 years, or both.

(d) The district courts of the United States have jurisdiction to restrain a violation of this chapter or a regulation prescribed under this chapter.

(e) At the request of the Secretary, the Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) of a vessel the owner or operator of which is subject to a penalty under this section. Clearance may be granted on filing a bond or other surety satisfactory to the Secretary.

CHAPTER 39—CARRIAGE OF ANIMALS

Sec.
3901. Regulations for accommodations for export animals.
3902. Penalties.

§ 3901. Regulations for accommodations for export animals

The Secretary of Agriculture may prescribe regulations governing the accommodations on board vessels for cattle, horses, mules, asses, sheep, goats, and swine to be carried from the United States to a foreign country. The regulations shall prescribe standards for space, ventilation, fittings, food and water supply, and other requirements the Secretary of Agriculture considers necessary for the safe and proper transportation and humane treatment of those animals. The Secretary of Agriculture may examine any vessel the Secretary of Agriculture considers necessary to carry out this chapter.

§ 3902. Penalties

When the owner, charterer, managing operator, agent, master, or individual in charge of a vessel carrying animals referred to in section 3901 of this title willfully violates, or causes or permits to be violated, a regulation prescribed under this chapter, the vessel may be prohibited from carrying any such animals from the United States for a period, of not more than one year, that the Secretary of Agriculture directs. The vessel may not be cleared from a port of the United States during that period.

CHAPTER 41—UNINSPECTED VESSELS

Sec.
4101. Application.
4102. Safety equipment.
4103. Exemptions.
4104. Regulations.
4105. Uninspected passenger vessels.
4106. Penalties.

§ 4101. Application

This chapter applies to an uninspected vessel—

(1) on the navigable waters of the United States; or

(2) owned in the United States and operating on the high seas.

§ 4102. Safety equipment

(a) Each uninspected vessel propelled by machinery shall be provided with the number, type, and size of fire extinguishers, capable of promptly and effectively extinguishing burning liquid fuel, that may be prescribed by regulation. The fire extinguishers shall be kept in condition for immediate and effective use and so placed as to be readily accessible.

(b) Each uninspected vessel propelled by machinery shall carry at least one readily accessible life preserver or other lifesaving device, of the type prescribed by regulation, for each individual on board.

(c) Each uninspected vessel shall have the carburetors of each engine of the vessel (except an outboard motor) using gasoline

as fuel, equipped with an efficient flame arrestor, backfire trap, or other similar device prescribed by regulation.

(d) Each uninspected vessel using a volatile liquid as fuel shall be provided with the means prescribed by regulation for properly and efficiently ventilating the bilges of the engine and fuel tank compartments, so as to remove any explosive or flammable gases.

§ 4103. Exemptions

Section 4102(a) of this title does not apply to a vessel propelled by outboard motors when competing in a race previously arranged and announced or, if the vessel is designed and intended only for racing, when operated incidental to tuning up the vessel and its engines for the race.

§ 4104. Regulations

The Secretary shall prescribe regulations to carry out this chapter.

§ 4105. Uninspected passenger vessels

Chapter 43 of this title applies to an uninspected passenger vessel.

§ 4106. Penalties

If a vessel to which this chapter applies is operated in violation of this chapter or a regulation prescribed under this chapter, the owner, charterer, managing operator, agent, master, and individual in charge are each liable to the United States Government for a civil penalty of $100. The vessel also is liable in rem for the penalty.

CHAPTER 43—RECREATIONAL VESSELS

Sec.
4301. Application.
4302. Regulations.
4303. Inspection and testing.
4304. Importation of nonconforming vessels and equipment.
4305. Exemptions.
4306. Federal preemption.
4307. Prohibited acts.
4308. Termination of unsafe operation.
4309. Investigation and reporting.
4310. Repair and replacement of defects.
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§ 4301. Application

(a) This chapter applies to a recreational vessel and associated equipment carried in the vessel on waters subject to the jurisdiction of the United States and, for a vessel owned in the United States, on the high seas.

(b) Except when expressly otherwise provided, this chapter does not apply to a foreign vessel temporarily operating on waters subject to the jurisdiction of the United States.

(c) Until there is a final judicial decision that they are navigable waters of the United States, the following waters lying entirely in New Hampshire are declared not to be waters subject to the jurisdiction of the United States within the meaning of this section: Lake Winnisquam, Lake Winnipesaukee, parts of the Merrimack River, and their tributary and connecting waters.

§ 4302. Regulations

(a) The Secretary may prescribe regulations—

(1) establishing minimum safety standards for recreational vessels and associated equipment, and establishing procedures and tests required to measure conformance with those standards, with each standard—

(A) meeting the need for recreational vessel safety; and

(B) being stated, insofar as practicable, in terms of performance;

(2) requiring the installation, carrying, or use of associated equipment (including fuel systems, ventilation systems, electrical systems, sound-producing devices, firefighting equipment, lifesaving devices, signaling devices, ground tackle, life- and grab-rails, and navigational equipment) on recreational vessels and classes of recreational vessels subject to this chapter, and prohibiting the installation, carrying, or use of associated equipment that does not conform with safety standards established under this section; and

(3) requiring or permitting the display of seals, labels, plates, insignia, or other devices for certifying or evidencing compliance with safety regulations and standards of the United States Government for recreational vessels and associated equipment.

(b) Each regulation prescribed under this section shall specify an effective date that is not earlier than 180 days from the date the regulation was published, unless the Secretary finds that there exists a recreational vessel safety hazard so critical as to require an earlier effective date. However, this period may not be more than 24 months for cases involving, in the discretion of the Secretary, major product design, retooling, or major changes in the manufacturing process.

(c) In prescribing regulations under this section, the Secretary shall, among other things—

(1) consider the need for and the extent to which the regulations will contribute to recreational vessel safety;

(2) consider relevant available recreational vessel safety standards, statistics, and data, including public and private research, development, testing, and evaluation;

(3) not compel substantial alteration of a recreational vessel or item of associated equipment that is in existence, or the construction or manufacture of which is begun before the effective date of the regulation, but subject to that limitation may require compliance or performance, to avoid a substantial risk of personal injury to the public, that the Secretary considers appropriate in relation to the degree of hazard that the compliance will correct; and

(4) consult with the National Boating Safety Advisory Council established under section 13110 of this title about the considerations referred to in clauses (1)-(3) of this subsection.

(d) Section 8903 of this title does not apply to a vessel being operated for bona fide dealer demonstrations provided without fee to business invitees. However, if on the basis of substantial evidence, the Secretary decides under this section that requiring vessels so operated to be under the control of licensed individuals is necessary for boating safety, then the Secretary may prescribe regulations requiring the licensing of individuals controlling these vessels in the same manner as provided in chapter 89 of this title for individuals in control of vessels carrying passengers for hire.

§ 4303. Inspection and testing

(a) Subject to regulations, supervision, and reviews that the Secretary may prescribe, the Secretary may delegate to a person, private or public agency, or organization, or to an officer or employee under the supervision of that person or agency, any work, business, or function related to the testing, inspection, and examination necessary for compliance enforcement and for the development of data to enable the Secretary to prescribe regulations under section 4302 of this title.

(b) The Secretary may—

(1) conduct research, testing, and development necessary to carry out this chapter, including the procurement by negotiation or otherwise of experimental and other recreational vessels or associated equipment for research and testing purposes; and

(2) subsequently sell those vessels.

§ 4304. Importation of nonconforming vessels and equipment

The Secretary and the Secretary of the Treasury may authorize by joint regulations the importation of any nonconforming recreational vessel or associated equipment on conditions, including providing a bond, that will ensure that the recreational vessel or associated equipment will be brought into conformity with applicable safety regulations and standards of the Government before the vessel or equipment is operated on waters subject to the jurisdiction of the United States.

§ 4305. Exemptions

If the Secretary considers that recreational vessel safety will not be adversely affected, the Secretary may issue an exemption from this chapter or a regulation prescribed under this chapter.

§ 4306. Federal preemption

Unless permitted by the Secretary under section 4305 of this title, a State or political subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated equipment performance or other safety standard or imposing a requirement for associated equipment (except insofar as the State or political subdivision may, in the absence of the Secretary's disapproval, regulate the carrying or use of marine safety articles to meet uniquely hazardous conditions or circumstances within the State) that is not identical to a regulation prescribed under section 4302 of this title.

§ 4307. Prohibited acts

(a) A person may not—

(1) manufacture, construct, assemble, sell or offer for sale, introduce or deliver for introduction into interstate commerce, or import into the United States, a recreational vessel, associated equipment, or component of the vessel or equipment unless—

(A) it conforms with this chapter or a regulation prescribed under this chapter; or

(B) it is intended only for export and is so labeled, tagged, or marked on the recreational vessel or equipment, including any markings on the outside of the container in which it is to be exported;

(2) affix, attach, or display a seal, document, label, plate, insignia, or other device indicating or suggesting compliance with standards of the United States Government on, in, or in connection with, a recreational vessel or item of associated equipment that is false or misleading; or

(3) fail to provide a notification as required by this chapter or fail to exercise reasonable diligence in carrying out the notification and reporting requirements of this chapter.

(b) A person may not operate a vessel in violation of this chapter or a regulation prescribed under this chapter.

§ 4308. Termination of unsafe operation

If an official charged with the enforcement of this chapter observes a recreational vessel being operated without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition (as defined in regulations prescribed under this chapter) and, in the judgment of the official, the operation creates an especially hazardous condition, the official may direct the opera-

tor of the recreational vessel to take immediate and reasonable steps necessary for the safety of individuals on board the vessel, including directing the operator to return to a mooring and to remain there until the situation creating the hazard is corrected or ended.

§ 4309. Investigation and reporting

(a) A recreational vessel manufacturer to whom this chapter applies shall establish and maintain records and reports and provide information the Secretary may require to enable the Secretary to decide whether the manufacturer has acted or is acting in compliance with this chapter and regulations prescribed under this chapter. On request of an officer, employee, or agent authorized by the Secretary, a recreational vessel manufacturer shall permit the officer, employee, or agent to inspect, at reasonable times, factories or other facilities, and records related to deciding whether the manufacturer has acted or is acting in compliance with this chapter and regulations prescribed under this chapter.

(b) Information reported to or otherwise obtained by the Secretary or the representative of the Secretary under this section containing or related to a trade secret or other matter referred to in section 1905 of title 18, or authorized to be exempt from public disclosure by section 552(b) of title 5, is confidential under section 1905. However, on approval of the Secretary, the information may be disclosed to other officers, employees, or agents concerned with carrying out this chapter or when it is relevant in a proceeding under this chapter.

§ 4310. Repair and replacement of defects

(a) In this section, "associated equipment" includes only items or classes of associated equipment that the Secretary shall prescribe by regulation after deciding that the application of the requirements of this section to those items or classes of associated equipment is reasonable and in furtherance of this chapter.

(b) If a recreational vessel or associated equipment has left the place of manufacture and the recreational vessel manufacturer discovers or acquires information that the manufacturer decides, in the exercise of reasonable and prudent judgment, indicates that a recreational vessel or associated equipment subject to an applicable regulation prescribed under section 4302 of this title either fails to comply with the regulation, or contains a defect that creates a substantial risk of personal injury to the public, the manufacturer shall provide notification of the defect or failure of compliance as provided by subsections (c) and (d) of this section within a reasonable time after the manufacturer has discovered the defect.

(c)(1) The notification required by subsection (b) of this section shall be given to the following persons in the following manner:

(A) by certified mail to the first purchaser for other than resale, except that the requirement for notification of the first purchaser shall be satisfied if the recreational vessel manufacturer exercises reasonable diligence in establishing and maintaining a list of those purchasers and their current addresses, and sends the required notice to each person on that list at the address appearing on the list.

(B) by certified mail to subsequent purchasers if known to the manufacturer.

(C) by certified mail or other more expeditious means to the dealers and distributors of the recreational vessels or associated equipment.

(2) The notification required by subsection (b) of this section is required to be given only for a defect or failure of compliance discovered by the recreational vessel manufacturer within a reasonable time after the manufacturer has discovered the defect or failure, except that the manufacturer's duty of notification under paragraph (1) (A) and (B) of this subsection applies only to a defect or failure of compliance discovered by the manufacturer within one of the following appropriate periods:

(A) if a recreational vessel or associated equipment required by regulation to have a date of certification affixed, 5 years from the date of certification.

(B) if a recreational vessel or associated equipment not required by regulation to have a date of certification affixed, 5 years from the date of manufacture.

(d) The notification required by subsection (b) of this section shall contain a clear description of the defect or failure to comply, an evaluation of the hazard reasonably related to the defect or failure, a statement of the measures to correct the defect or failure, and an undertaking by the recreational vessel manufacturer to take those measures only at the manufacturer's cost and expense.

(e) Each recreational vessel manufacturer shall provide the Secretary with a copy of all notices, bulletins, and other communications to dealers and distributors of that manufacturer, and to purchasers of recreational vessels or associated equipment of that manufacturer, about a defect related to safety in the recreational vessels or associated equipment, and any failure to comply with the regulation or order applicable to the recreational vessels or associated equipment. The Secretary may publish or otherwise disclose to the public information in the notices or other information the Secretary has that the Secretary considers will assist in carrying out this chapter. However, the Secretary may disclose any information that contains or relates to a trade secret only if the Secretary decides that the information is necessary to carry out this chapter.

(f) If, through testing, inspection, investigation, or examination of reports, the Secretary decides that a recreational vessel or associated equipment to which this chapter applies contains a defect related to safety or fails to comply with an applicable regulation prescribed under this chapter and notification under this chapter is appropriate, the Secretary shall notify the recreational vessel manufacturer of the defect or failure. The notice shall contain the findings of the Secretary and shall include a synopsis of the information on which they are based. The manufacturer may then provide the notification required by this chapter to the persons designated in this chapter or dispute the Secretary's decision. If disputed, the Secretary shall provide the manufacturer with an opportunity to present views and establish that there is no such defect or failure. When the Secretary considers it to be in the public interest, the Secretary may publish notice of the proceeding in the Federal Register and provide interested persons, including the National Boating Safety Advisory Council, with an opportunity to comment. If, after presentation by the manufacturer, the Secretary decides that the recreational vessel or associated equipment contains a defect related to safety or fails to comply with an applicable regulation, the Secretary may direct the manufacturer to provide the notifications specified in this chapter.

(g) The Secretary may prescribe regulations to carry out this section, including the establishment of procedures that require dealers and distributors to assist manufacturers in obtaining information required by this section. A regulation prescribed under this subsection does not relieve a manufacturer of any obligation imposed by this section.

§ 4311. Penalties and injunctions

(a) A person willfully operating a recreational vessel in violation of this chapter or a regulation prescribed under this chapter shall be fined not more than $5,000, imprisoned for not more than one year, or both.

(b) A person violating section 4307(a)(1) of this title is liable to the United States Government for a civil penalty of not more than $2,000, except that the maximum civil penalty may be not more than $100,000 for a related series of violations. When a corporation violates section 4307(a)(1), any director, officer, or executive employee of the corporation who knowingly and willfully ordered, or knowingly and willfully authorized, a violation is individually liable to the Government for the penalty, in addition to the corporation. However, the director, officer, or executive employee is not liable individually under this subsection if the director, officer, or executive employee can demonstrate by a preponderance of the evidence that—

(1) the order or authorization was issued on the basis of a decision, in exercising reasonable and prudent judgment, that the nonconformity with standards and regulations constituting the violation would not cause or constitute a substantial risk of personal injury to the public; and

(2) at the time of the order or authorization, the director, officer, or executive employee advised the Secretary in writing of acting under this clause and clause (1) of this subsection.

(c) A person violatng any other provision of this chapter or other regulation prescribed under this chapter is liable to the Government for a civil penalty of not more than $1,000. If the violation involves the operation of a vessel, the vessel also is liable in rem for the penalty.

(d) When a civil penalty of not more than $200 has been assessed under this chapter, the Secretary may refer the matter of collection of the penalty directly to the United States magistrate of the jurisdiction in which the person liable may be found for collection procedures under supervision of the district court and under an order issued by the court delegating this authority under section 636(b) of title 28.

(e) The district courts of the United States have jurisdiction to restrain a violation of this chapter, or to restrain the sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation into the United States, of a recreational vessel or associated equipment that the court decides does not conform to safety standards of the Government. A civil action under this subsection shall be brought by filing a petition by the Attorney General for the Government. When practicable, the Secretary shall give notice to a person against whom an action for injunctive relief is contemplated and provide the person with an opportunity to present views and, except for a knowing and willful violation, shall provide the person with a reasonable opportunity to achieve compliance. The failure to give notice and provide the opportunity does not preclude the granting of appropriate relief by the district court.

(f) A person is not subject to a penalty under this chapter if the person—

(1) establishes that the person did not have reason to know, in exercising reasonable care, that a recreational vessel or associated equipment does not conform with the applicable safety standards of the Government; or

(2) holds a certificate issued by the manufacturer of that recreational vessel or associated equipment to the effect that the recreational vessel or associated equipment conforms to all applicable recreational vessel safety standards of the Government, unless the person knows or reasonably should have known that the recreational vessel or associated equipment does not so conform.

(g) Compliance with this chapter or standards, regulations, or orders prescribed under this chapter does not relieve a person from liability at common law or under State law.

[PART C—RESERVED FOR LOAD LINES OF VESSELS]

PART D—MARINE CASUALTIES

CHAPTER 61—REPORTING MARINE CASUALTIES

Sec.
6101. Marine casualties and reporting.
6102. State marine casualty reporting system.
6103. Penalty.

§ 6101. Marine casualties and reporting

(a) The Secretary shall prescribe regulations on the marine casualties and incidents to be reported and the manner of reporting. The regulations shall require reporting the following marine casualties:

(1) death of an individual.

(2) serious injury to an individual.

(3) material loss of property.

(4) material damage affecting the seaworthiness or efficiency of the vessel.

(b) A marine casualty shall be reported within 5 days as provided in this part and regulations prescribed under this part.

(c) When the owner, charterer, managing operator, or agent of a vessel of the United States has reason to believe (because of lack of communication with or nonappearance of a vessel or any other incident) that the vessel may have been lost or imperiled, the owner, charterer, managing operator, or agent immediately shall attempt to determine the status of the vessel. If the owner, charterer, managing operator, or agent cannot determine the status of the vessel, the owner, charterer, managing operator, or agent immediately shall notify the Coast Guard and provide the name and identification number of the vessel, the names of individuals on board, and any other information that may be requested by the Coast Guard.

(d) This part applies to a foreign vessel when involved in a marine casualty on the navigable waters of the United States.

(e) A marine casualty not resulting in the death of an individual shall be classified according to the gravity of the casualty, as prescribed by regulation, giving consideration to the extent of injuries to individuals, the extent of property damage, the dangers that the casualty creates, and the size, occupation, and means of propulsion of each vessel involved.

§ 6102. State marine casualty reporting system

(a) The Secretary shall prescribe regulations for a uniform State marine casualty reporting system for vessels. Regulations shall prescribe the casualties to be reported and the manner of reporting. A State shall compile and submit to the Secretary reports, information, and statistics on casualties reported to the State.

(b) The Secretary shall collect, analyze, and publish reports, information, and statistics on marine casualties together with findings and recommendations the Secretary considers appropriate. If a State marine casualty reporting system provides that information derived from casualty reports (except statistical information) may not be publicly disclosed, or otherwise prohibits use by the State or any person in any action or proceeding against a person, the Secretary may use the information provided by the State only in the same way that the State may use the information.

§ 6103. Penalty

An owner, charterer, managing operator, agent, master, or individual in charge of a vessel failing to report a casualty or incident as required under section 6101 of this title or a regulation prescribed under section 6101 is liable to the United States Government for a civil penalty of $1,000.

CHAPTER 63—INVESTIGATING MARINE CASUALTIES

Sec.
6301. Investigation of marine casualties.
6302. Public investigations.
6303. Rights of parties in interest.
6304. Subpena authority.
6305. Reports of investigations.
6306. Penalty.
6307. Notifications to Congress.

§ 6301. Investigation of marine casualties

The Secretary shall prescribe regulations for the immediate investigation of marine casualties under this part to decide, as closely as possible—

(1) the cause of the casualty, including the cause of any death;

(2) whether an act of misconduct, incompetence, negligence, unskillfulness, or willful violation of law committed by any individual licensed, certificated, or documented under part E of this subtitle has contributed to the cause of the casualty, or to a death involved in the casualty, so that appropriate remedial action under chapter 77 of this title may be taken;

(3) whether an act of misconduct, incompetence, negligence unskillfulness, or willful violation of law committed by any person, including an officer, employee, or member of the Coast Guard, contributed to the cause of the casualty, or to a death involved in the casualty;

(4) whether there is evidence that an act subjecting the offender to a civil penalty under the laws of the United States has been committed, so that appropriate action may be undertaken to collect the penalty;

(5) whether there is evidence that a criminal act under the laws of the United States has been committed, so that the matter may be referred to appropriate authorities for prosecution; and

(6) whether there is need for new laws or regulations, or amendment or repeal of existing laws or regulations, to prevent the recurrence of the casualty.

§ 6302. Public investigations

Each investigation conducted under this chapter and regulations prescribed under this chapter shall be open to the public, except when evidence affecting the national security is to be received.

§ 6303. Rights of parties in interest

In an investigation conducted under this chapter, the following shall be allowed to be represented by counsel, to cross-examine witnesses, and to call witnesses:

(1) an owner,

(2) any holder of a license or certificate of registry,

(3) any holder of a merchant mariner's document,

(4) any other person whose conduct is under investigation, and

(5) any other party in interest.

§ 6304. Subpena authority

(a) In an investigation under this chapter, the attendance and testimony of witnesses, including parties in interest, and the production of any evidence may be compelled by subpena. The subpena authority granted by this section is coextensive with that of a district court of the United States, in civil matters, for the district in which the investigation is conducted.

(b) When a person fails to obey a subpena issued under this section, the district court of the United States for the district in which the investigation is conducted or in which the person failing to obey is found, shall on proper application issue an order directing that person to comply with the subpena. The court may punish as contempt any disobedience of its order.

(c) A witness complying with a subpena issued under this section may be paid for actual travel and attendance at the rate provided for witnesses in the district courts of the United States.

(d) An official designated to conduct an investigation under this part may issue subpenas as provided in this section and administer oaths to witnesses.

§ 6305. Reports of investigations

(a) The Secretary shall prescribe regulations about the form and manner of reports of investigations conducted under this part.

(b) Reports of investigations conducted under this part shall be made available to the public, except to the extent that they contain information related to the national security.

§ 6306. Penalty

A person attempting to coerce a witness, or to induce a witness, to testify falsely in connection with a marine casualty, or to induce a witness to leave the jurisdiction of the United States, shall be fined $5,000, imprisoned for one year, or both.

§ 6307. Notifications to Congress

(a) The Secretary shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives of any hearing, before the hearing occurs, investigating a major marine casualty involving a death under section 6301 of this title.

(b) The Secretary shall submit to a committee referred to in subsection (a) of this section information on a major marine casualty that is requested by that committee or the chairman of the committee if the submission of that information is not prohibited by a law of the United States.

(c) The Secretary shall submit annually to Congress a summary of the marine casualties reported during the prior fiscal year, together with a brief statement of action taken concerning those casualties.

PART E—LICENSES, CERTIFICATES, AND MERCHANT MARINERS' DOCUMENTS

CHAPTER 71—LICENSES AND CERTIFICATES OF REGISTRY

Sec.
7101. Issuing and classifying licenses and certificates of registry.

§ 7101. Issuing and classifying licenses and certificates of registry

(a) Licenses and certificates of registry are established for individuals who are required to hold licenses or certificates under this subtitle.

(b) Under regulations prescribed by the Secretary, the Secretary—

(1) issues the licenses and certificates of registry; and

(2) may classify the licenses and certificates of registry as provided in subsections (c) and (f) of this section, based on—

(A) the tonnage, means of propulsion, and horsepower of machine-propelled vessels;

(B) the waters on which vessels are to be operated; or

(C) other reasonable standards.

(c) The Secretary may issue licenses in the following classes to applicants found qualified as to age, character, habits of life, experience, professional qualifications, and physical fitness:

(1) masters, mates, and engineers.

(2) pilots.

(3) operators.

(4) radio officers.

(d) In classifying individuals under subsection (c)(1) of this section, the Secretary shall establish, when possible, suitable career patterns and service and other qualifying requirements appropriate to the particular service or industry in which the individuals are engaged.

(e) An individual may be issued a license under subsection (c)(2) of this section only if the applicant—

(1) is at least 21 years of age;

(2) is of sound health and has no physical limitations that would hinder or prevent the performance of a pilot's duties;

(3) agrees to have a thorough physical examination each year while holding the license;

(4) demonstrates, to the satisfaction of the Secretary, that the applicant has the requisite general knowledge and skill to hold the license;

(5) demonstrates proficiency in the use of electronic aids to navigation;

(6) maintains adequate knowledge of the waters to be navigated and knowledge of regulations for the prevention of collisions in those waters;

(7) has sufficient experience, as decided by the Secretary, to evidence ability to handle any vessel of the type and size which the applicant may be authorized to pilot; and

(8) meets any other requirement the Secretary considers reasonable and necessary.

(f) The Secretary may issue certificates of registry in the following classes to applicants found qualified as to character, knowledge, skill, and experience:

(1) pursers.

(2) medical doctors.

(3) professional nurses.

§ 7102. Citizenship

Licenses and certificates of registry for individuals on documented vessels may be issued only to citizens of the United States.

§ 7103. Licenses for radio officers

(a) A license as radio officer may be issued only to an applicant who has a first-class or second-class radiotelegraph operator license issued by the Federal Communications Commission.

(b) Except as provided in section 7318 of this title, this part does not affect the status of radiotelegraph operators serving on board vessels operating only on the Great Lakes.

§ 7104. Certificates for medical doctors and nurses

A certificate of registry as a medical doctor or professional nurse may be issued only to an applicant who has a license as a medical doctor or registered nurse, respectively, issued by a State.

§ 7105. Oaths

An applicant for a license or certificate of registry shall take, before the issuance of the license or certificate, an oath before a designated official, without concealment or reservation, that the applicant will perform faithfully and honestly, according to the best skill and judgment of the applicant, all the duties required by law.

§ 7106. Duration of licenses

A license issued under this part is valid for 5 years. However, the validity of a license issued to a radio officer is conditioned on the continuous possession by the holder of a first-class or second-class radiotelegraph operator license issued by the Federal Communications Commission.

§ 7107. Duration of certificates of registry

A certificate of registry issued under this part is not limited in duration. However, the validity of a certificate issued to a medical doctor or professional nurse is conditioned on the continuous possession by the holder of a license as a medical doctor or registered nurse, respectively, issued by a State.

§ 7108. Termination of licenses and certificates of registry

When the holder of a license or certificate of registry, the duration of which is conditioned under section 7106 or 7107 of this title, fails to hold the license required as a condition, the license or certificate of registry issued under this part is terminated.

§ 7109. Renewal of licenses

A license issued under this part may be renewed for additional 5-year periods.

§ 7110. Exhibiting licenses

Each holder of a license issued under this part shall display, within 48 hours after employment on a vessel for which that license is required, the license in a conspicuous place on the vessel.

§ 7111. Licenses for fishing vessels not subject to inspection

Examinations for licensing individuals on fishing vessels not required to be inspected under part B of this subtitle shall be oral.

§ 7112. Licenses of masters or mates as pilots

A master or mate licensed under this part who also qualifies as a pilot is not required to hold 2 licenses. Instead, the qualification of the master or mate as pilot shall be endorsed on the master's or mate's license.

§ 7113. Exemption from draft

A licensed master, mate, pilot, or engineer of a vessel inspected under part B of this subtitle, propelled by machinery or carrying hazardous liquid cargoes in bulk, is not liable to draft in time of war, except for performing duties authorized by the license. When performing those duties in the service of the United States Government, the master, mate, pilot, or engineer is entitled to the highest rate of wages paid in the merchant marine of the United States for similar services. If killed or wounded when performing those duties, the master, mate, pilot, or engineer, or the heirs or legal representatives of the master, mate, pilot, or engineer, are entitled to all the privileges under the pension laws of the United States provided to members of the Armed Forces.

§ 7114. Fees

The Secretary may prescribe by regulation reasonable fees for the inspection of and the issuance of a certificate, license, or permit related to small passenger vessels and sailing school vessels.

CHAPTER 73—MERCHANT MARINERS' DOCUMENTS

§ 7301. General

(a) In this chapter—

(1) "service on deck" means service in the deck department in work related to the work usually performed on board vessels by able seamen and may include service on decked fishing vessels and on public vessels of the United States;

(2) 360 days is equal to one year's service; and

(3) a day is equal to 8 hours of labor or duty.

(b) The Secretary may prescribe regulations to carry out this chapter.

§ 7302. Issuing merchant mariners' documents and continuous discharge books

(a) The Secretary shall issue a merchant mariner's document to an individual required to have that document under part F of this subtitle if the individual satisfies the requirements of this part. The document serves as a certificate of identification and as a certificate of service, specifying each rating in which the holder is qualified to serve on board vessels on which that document is required under part F.

(b) The Secretary also may issue a continuous discharge book to an individual issued a merchant mariner's document if the individual requests.

§ 7303. Possession and description of merchant mariners' documents

A merchant mariner's document shall be retained by the seaman to whom issued. The document shall contain the signature, notations of nationality, age, and physical description, the photograph, the thumbprint, and the home address of the seaman. In addition, the document shall specify the rate or ratings in which the seaman is qualified to serve.

§ 7304. Citizenship of notation on merchant mariners' documents

An individual applying for a merchant mariner's document shall provide satisfactory proof that the individual is a citizen of the United States before that notation is made on the document.

§ 7305. Oaths for holders of merchant mariners' documents

An applicant for a merchant mariner's document shall take, before issuance of the document, an oath that the applicant will perform faithfully and honestly all the duties required by law, and will carry out the lawful orders of superior officers.

§ 7306. General requirements and classifications for able seamen

(a) To qualify for an endorsement as able seaman authorized by this section, an applicant must provide satisfactory proof that the applicant—

(1) is at least 18 years of age;

(2) has the service required by the applicable section of this part;

(3) is qualified professionally as demonstrated by an applicable examination or educational requirements; and

(4) is qualified as to sight, hearing, and physical condition to perform the seaman's duties.

(b) The classifications authorized for endorsement as able seaman are the following:

(1) able seaman—unlimited.

(2) able seaman—limited.

(3) able seaman—special.

(4) able seaman—offshore supply vessels.

(5) able seaman—sail.

§ 7307. Able seamen—unlimited

The required service for the endorsement of able seaman—unlimited, qualified for unlimited service on a vessel on any waters, is at least 3 years' service on deck on board vessels operating at sea or on the Great Lakes.

§ 7308. Able seamen—limited

The required service for the endorsement of able seaman—limited, qualified for limited service on a vessel on any waters, is at least 18 months' service on deck on board vessels of at least 100 gross tons operating on the oceans or navigable waters of the United States (including the Great Lakes).

§ 7309. Able seamen—special

The required service for the endorsement of able seaman—special, qualified for special service on a vessel on any waters, is at least 12 months' service on deck on board vessels operating on the oceans or the navigable waters of the United States (including the Great Lakes).

§ 7310. Able seamen—offshore supply vessels

For service on a vessel of less than 500 gross tons engaged in support of exploration, exploitation, or production of offshore mineral or energy resources, an individual may be rated as able seaman—offshore supply vessels if the individual has at least 6 months' service on deck on board vessels operating on the oceans or the navigable waters of the United States (including the Great Lakes).

§ 7311. Able seamen—sail

For service on a sailing school vessel on any waters, an individual may be rated as able seaman—sail if the individual has at least 6 months' service on deck on sailing school vessels, oceanographic research vessels powered primarily by sail, or equivalent sailing vessels operating on the oceans or navigable waters of the United States (including the Great Lakes).

§ 7312. Scale of employment

(a) Individuals qualified as able seamen—unlimited under section 7307 of this title may constitute all of the able seamen required on a vessel.

(b) Individuals qualified as able seamen—limited under section 7308 of this title may constitute all of the able seamen required on a vessel of less than 1,600 gross tons or on a vessel operating on the Great Lakes and the Saint Lawrence River as far east as Sept Iles. Individuals qualified as able seamen—limited may constitute not more than 50 percent of the number of able seamen required on board other vessels.

(c) Individuals qualified as able seamen—special under section 7309 of this title may constitute—

(1) all of the able seamen required on a vessel of not more than 500 gross tons or on a seagoing barge or towing vessel; and

(2) not more than 50 percent of the number of able seamen required on board other vessels.

(d) Individuals qualified as able seamen—offshore supply vessels under section 7310 of this title may constitute all of the able seamen required on board a vessel of less than 500 gross tons engaged in support of exploration, exploitation, or production of offshore mineral or energy resources.

(e) When the service of able seaman—limited or able seamen—special is authorized for only a part of the required number of able seamen on board a vessel, the combined percentage of those individuals so qualified may not be greater than 50 percent of the required number.

§ 7313. General requirements for members of engine departments

(a) Classes of endorsement as qualified members of the engine department on vessels of at least 100 gross tons (except vessels operating on rivers or lakes (except the Great Lakes)) may be prescribed by regulation.

(b) The ratings of wiper and coal passer are entry ratings and are not ratings as qualified members of the engine department.

(c) An applicant for an endorsement as qualified member of the engine department must provide satisfactory proof that the applicant—

(1) has the service required by section 7314 of this title;

(2) is qualified professionally as demonstrated by an applicable examination; and

(3) is qualified as to sight, hearing, and physical condition to perform the member's duties.

§ 7314. Service requirements for qualified members of engine departments

To qualify for an endorsement as qualified member of the engine department, an applicant must provide proof that the applicant has 6 months' service in the related entry rating as described in section 7313(b) of this title.

§ 7315. Training

(a) Graduation from a nautical school vessel approved under law and regulation may be substituted for the service requirements under section 7307 or 7314 of this title.

(b) The satisfactory completion of other courses of instruction approved by the Secretary may be substituted for not more than one-third of the required service on deck at sea under sections 7307-7311 of this title.

(c) The satisfactory completion of other courses of instruction approved by the Secretary may be substituted for not more than one-half of the required service at sea under section 7314 of this title.

§ 7316. Lifeboatmen

To qualify for an endorsement as lifeboatman, an applicant must provide satisfactory proof that the applicant—

(1) has the service or training required by regulation;

(2) is qualified professionally as demonstrated by examination; and

(3) is qualified professionally by actual demonstration.

§ 7317. Tankermen

(a) The Secretary shall prescribe procedures, standards, and qualifications for the issuance of certificates or endorsements as tankerman, stating the types of oil or hazardous material that can be handled with safety to the vessel and the marine environment.

(b) An endorsement as tankerman shall indicate the grades or types of cargo the holder is qualified and authorized to handle with safety on board vessels.

§ 7318. Radiotelegraph operators on Great Lakes

(a) A radiotelegraph operator on the Great Lakes only shall have a first-class or second-class radiotelegraph operator's license issued by the Federal Communications Commission.

(b) An endorsement as radiotelegraph operator on the Great Lakes only ends if the holder ceases to hold the license issued by the Commission.

§ 7319. Records of merchant mariners' documents

The Secretary shall maintain records on each merchant mariner's document issued, including the name and address of the seaman to whom issued and the next of kin of the seaman. The records are not open to general or public inspection.

CHAPTER 75—GENERAL PROCEDURES FOR LICENSING, CERTIFICATION, AND DOCUMENTATION

Sec.

7501. Duplicates.

7502. Records.

7503. Dangerous drugs as grounds for denial.

§ 7501. Duplicates

(a) If a license, certificate, or document issued under this part is lost as a result of a marine casualty, the holder shall be supplied with a duplicate without cost.

(b) For any other loss, the seaman may obtain a duplicate on payment of reasonable costs prescribed by regulation by the Secretary.

§ 7502. Records

The Secretary shall maintain records on the issuances, denials, suspensions, and revocations of licenses, certificates of registry, merchant mariners' documents, and endorsements on those licenses, certificates, and documents.

§ 7503. Dangerous drugs as grounds for denial

(a) In this section, "dangerous drug" means a narcotic drug, controlled substance, and marihuana (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)).

(b) A license, certificate, or document authorized to be issued under this part may be denied to an individual who—

(1) within 10 years before applying for the license, certificate, or document, has been convicted of violating a dangerous drug law of the United States or of a State; or

(2) when applying, has ever been a user of, or addicted to, a dangerous drug unless the individual provides satisfactory proof that the individual is cured.

CHAPTER 77—SUSPENSION AND REVOCATION

Sec.
7701. General.
7702. Administrative procedure.
7703. Bases for suspension or revocation.
7704. Dangerous drugs as grounds for revocation.
7705. Subpenas and oaths.

§ 7701. General

(a) The purpose of suspension and revocation proceedings is to promote safety at sea.

(b) Licenses, certificates of registry, and merchant mariners' documents may be suspended or revoked for acts described in section 7703 of this title.

(c) When a license, certificate of registry, or merchant mariner's document has been revoked under this chapter, the former holder may be issued a new license, certificate, or document only after it has been decided, under regulations prescribed by the Secretary, that the issuance is compatible with the requirements of good discipline and safety at sea.

(d) The Secretary may prescribe regulations to carry out this chapter.

§ 7702. Administrative procedure

(a) Sections 551-559 of title 5 apply to each hearing under this chapter about suspending or revoking a license, certificate of registry, or merchant mariners' document.

(b) The individual whose license, certificate of registry, or merchant mariner's document has been suspended or revoked under this chapter may appeal, within 30 days, the suspension or revocation to the Secretary.

§ 7703. Bases for suspension or revocation

A license, certificate, or merchant mariner's document issued by the Secretary may be suspended or revoked if, when acting under the authority of that license, certificate, or document, the holder—

(1) has violated or failed to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters.

(2) has committed an act of incompetence, misconduct, or negligence.

§ 7704. Dangerous drugs as grounds for revocation

(a) In this section, "dangerous drug" means a narcotic drug, controlled substance, and marihuana (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)).

(b) If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or document issued under this part, within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license, certificate, or document shall be revoked.

(c) If it is shown that a holder has been a user of, or addicted to, a dangerous drug, the license, certificate, or document shall be revoked unless the holder provides satisfactory proof that the holder is cured.

§ 7705. Subpenas and oaths

(a) An official designated to investigate or preside at a hearing on matters that are grounds for suspension or revocation of licenses, certificates, and documents may administer oaths and issue subpenas to compel the attendance and testimony of witnesses and the production of records or other evidence during investigations and at hearings.

(b) The jurisdictional limits of a subpena issued under this section are the same as, and are enforceable in the same manner as, subpenas issued under chapter 63 of this title.

PART F—MANNING OF VESSELS

CHAPTER 81—GENERAL

Sec.
8101. Complement of inspected vessels.
8102. Watchmen.
8103. Citizenship and Naval Reserve requirements.
8104. Watches.
8105. Regulations.

§ 8101. Complement of inspected vessels

(a) The certificate of inspection issued to a vessel under part B of this subtitle shall state the complement of licensed individuals and crew (including lifeboatmen) considered by the Secretary to be necessary for safe operation. A manning requirement imposed on a sailing school vessel shall consider the participation of sailing school instructors and sailing school students in the operation of that vessel.

(b) The Secretary may modify the complement, by endorsement on the certificate, for reasons of changed conditions or employment.

(c) A requirement made under this section by an authorized official may be appealed to the Secretary under prescribed regulations.

(d) A vessel to which this section applies may not be operated without having in its service the complement required in the certificate of inspection.

(e) When a vessel is deprived of the service of a member of its complement without the consent, fault, or collusion of the owner, charterer, managing operator, agent, master, or individual in charge of the vessel, the master shall engage, if obtainable, a number of members equal to the number of those of whose services the master has been deprived. The replacements must be of the same or a higher grade or rating than those whose places they fill. If the master finds the vessel is sufficiently manned for the voyage, and replacements are not available to fill all the vacancies, the vessel may proceed on its voyage. Within 12 hours after the vessel arrives at its destination, the master shall report in writing to the Secretary the cause of each deficiency in the complement. A master failing to make the report is liable to the United States Government for a civil penalty of $50 for each deficiency.

(f) The owner, charterer, or managing operator of a vessel not manned as required by this section is liable to the Government for a civil penalty of $100, or, for a deficiency of a licensed individual, a penalty of $500.

(g) A person may not employ an individual as, and an individual may not serve as, a master, mate, engineer, radio officer, or pilot of a vessel to which this part or part B of this subtitle applies if the individual is not licensed by the Secretary. A person (including an individual) violating this subsection is liable to the Government for a civil penalty of not more than $500. Each day of a continuing violation is a separate offense.

(h) The owner, charterer, or managing operator of a freight vessel of less than 100 gross tons, a small passenger vessel, or a sailing school vessel not manned as required by this section is liable to the Government for a civil penalty of $1,000. The vessel also is liable in rem for the penalty.

§ 8102. Watchmen

The owner, charterer, or managing operator of a vessel carrying passengers during the nighttime shall keep a suitable number of watchmen in the vicinity of the cabins or staterooms and on each deck to guard against and give alarm in case of a fire or other danger. An owner, charterer, or managing operator failing to provide watchmen required by this section is liable to the United States Government for a civil penalty of $1,000.

§ 8103. Citizenship and Naval Reserve requirements

(a) Only a citizen of the United States may serve as master, chief engineer, or officer in charge of a deck watch or engineering watch on a documented vessel.

(b) On each departure of a documented vessel (except a fishing or whaling vessel or yacht) from a port of the United States, 75 percent of the seamen (excluding licensed individuals) must be citizens of the United States. If the Secretary decides, on investigation, that qualified citizen seamen are not available, the Secretary may reduce the percentage.

(c) On each departure from the United States of a vessel (except a passenger vessel) for which a construction or operating differential subsidy has been granted, all of the seamen of the vessel must be citizens of the United States.

(d)(1) On each departure from the United States of a passenger vessel for which a construction or operating differential subsidy has been granted, at least 90 percent of the entire complement (including licensed individuals) must be citizens of the United States.

(2) An individual not required by this subsection to be a citizen of the United States may be engaged only if the individual has a declaration of intention to become a citizen of the United States or other evidence of admission to the United States for permanent residence. An alien may be employed only in the steward's department of the passenger vessel.

(e) If a documented vessel is deprived for any reason of the services of an individual (except the master) when on a foreign voyage and a vacancy consequently occurs, until the vessel's first return to a United States port at which a replacement who is a citizen of the United States can be obtained, an individual not a citizen of the United States may serve in—

(1) the vacancy; or

(2) a vacancy resulting from the promotion of another individual to fill the original vacancy.

(f) A person employing an individual in violation of this section or a regulation pre-

scribed under this section is liable to the United States Government for a civil penalty of $500 for each individual so employed.

(g) A deck or engineer officer employed on a vessel on which an operating differential subsidy is paid, or employed on a vessel (except a vessel of the Coast Guard or Saint Lawrence Seaway Development Corporation) owned or operated by the Department of Transportation or by a corporation organized or controlled by the Department, if eligible, shall be a member of the Naval Reserve.

(h) The President may—

(1) suspend any part of this section during a proclaimed national emergency; and

(2) when the needs of commerce require, suspend as far and for a period the President considers desirable, subsection (a) of this section for crews of vessels of the United States documented for foreign trade.

§ 8104. Watches

(a) An owner, charterer, managing operator, master, individual in charge, or other person having authority may permit an officer to take charge of the deck watch on a vessel when leaving or immediately after leaving port only if the officer has been off duty for at least 6 hours within the 12 hours immediately before the time of leaving.

(b) On an oceangoing or coastwise vessel of not more than 100 gross tons, a licensed individual may not be required to work more than 9 of 24 hours when in port, including the date of arrival, or more than 12 of 24 hours at sea, except in an emergency when life or property are endangered.

(c) On a towing vessel (except a towing vessel operated only for fishing or engaged in salvage operations) operating on the Great Lakes, harbors of the Great Lakes, and connecting or tributary waters between Gary, Indiana, Duluth, Minnesota, Niagara Falls, New York, and Ogdensburg, New York, a licensed individual or seaman in the deck or engine department may not be required or permitted to work more than 8 hours in one day, except in an emergency when life or property are endangered.

(d) On a merchant vessel of more than 100 gross tons (except a vessel only operating on rivers, harbors, lakes (except the Great Lakes), bays, sounds, bayous, and canals, a fishing or whaling vessel, yacht, or vessel engaged in salvage operations), the licensed individuals, sailors, coal passers, firemen, oilers, and water tenders shall be divided, when at sea, into at least 3 watches, and shall be kept on duty successively to perform ordinary work incident to the operation and management of the vessel. The requirement of this subsection applies to radio officers only when at least 3 radio officers are employed. A licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day.

(e) On a vessel designated by subsections (c) and (d) of this section—

(1) a seaman may not be—

(A) engaged to work alternately in the deck and engine departments; or

(B) required to work in the engine department if engaged for deck department duty or required to work in the deck department if engaged for engine department duty;

(2) a seaman may not be required to do unnecessary work on Sundays, New Year's Day, July 4th, Labor Day, Thanksgiving Day, or Christmas Day, when the vessel is in a safe harbor, but this clause does not prevent dispatch of a vessel on a voyage; and

(3) when the vessel is in a safe harbor, 8 hours (including anchor watch) is a day's work.

(f) Subsections (d) and (e) of this section do not limit the authority of the master or other officer or the obedience of the seamen when, in the judgment of the master or other officer, any part of the crew is needed for—

(1) maneuvering, shifting the berth of, mooring, or unmooring, the vessel;

(2) performing work necessary for the safety of the vessel, or the vessel's passengers, crew, or cargo;

(3) saving life on board another vessel in jeopardy; or

(4) performing fire, lifeboat, or other drills in port or at sea.

(g) On a towing vessel (except a vessel to which subsection (c) of this section applies), an offshore supply vessel, or a barge to which this section applies, that is engaged on a voyage of less than 600 miles, the licensed individuals and crewmembers (except the coal passers, firemen, oilers, and water tenders) may be divided, when at sea, into at least 2 watches.

(h) On a vessel to which section 8904 of this title applies, an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period except in an emergency.

(i) A person violating subsection (a) or (b) of this section is liable to the United States Government for a civil penalty of $100.

(j) The owner, charterer, or managing operator of a vessel on which a violation of subsection (c), (d), (e), of (h) of this section occurs is liable to the Government for a civil penalty of $500. The seaman is entitled to discharge from the vessel and receipt of wages earned.

§ 8105. Regulations

The Secretary may prescribe regulations to carry out this part.

CHAPTER 83—MASTERS AND OFFICERS

§ 8301. Minimum number of licensed individuals

(a) Except as provided in chapter 89 of this title and except for a vessel operating only on rivers, harbors, lakes, bays, sounds, bayous, and canals, a vessel to which part B of this subtitle applies shall engage a minimum of licensed individuals as follows:

(1) Each of those vessels shall have a licensed master.

(2) A vessel of at least 1,000 gross tons and propelled by machinery shall have 3 licensed mates. However, if the vessel is on a voyage of less than 400 miles from port of departure to port of final destination, it shall have 2 licensed mates.

(3) A vessel of at least 200 gross tons but less than 1,000 gross tons and propelled by machinery shall have 2 licensed mates.

(4) A vessel of at least 100 gross tons but less than 200 gross tons and propelled by machinery shall have one licensed mate. However, if the vessel is on a voyage of more than 24 hours, it shall have 2 licensed mates.

(5) A freight vessel or a passenger vessel of at least 300 gross tons and propelled by machinery shall have a licensed engineer.

(b) An offshore supply vessel on a voyage of less than 600 miles shall have a licensed mate. However, if the vessel is on a voyage of at least 600 miles, the vessel shall have 2 licensed mates. An offshore supply vessel of more than 200 gross tons may not be operated without a licensed engineer.

(c) Subsection (a) of this section does not apply to a fishing or whaling vessel or a yacht.

(d) The Secretary may—

(1) suspend any part of this chapter during a national emergency proclaimed by the President; *and*

(2) increase the number of licensed individuals on a vessel to which this chapter applies if, in the Secretary's judgment, the vessel is not sufficiently manned for safe operation.

§ 8302. Staff department

(a) This section applies to a vessel of the United States except—

(1) a fishing or whaling vessel or a yacht;

(2) a vessel operated only on bays, sounds, inland waters, and lakes (except the Great Lakes); and

(3) a vessel ferrying passengers and cars on the Great Lakes.

(b) The staff department on a vessel is a separate and independent department. It consists of individuals registered under section 7101 of this title, clerks and individuals assigned to the senior registered medical doctor.

(c) The staff department is composed of a medical division and a purser's division. The officer in charge of each division is responsible only to the master. The senior registered medical doctor is in charge of the medical division. The senior registered purser is in charge of the purser's division.

(d) The officer in charge of the purser's division of the staff department on an oceangoing passenger vessel licensed to carry more than 100 passengers shall be a registered chief purser. When more than 3 persons are employed in the purser's division of that vessel, there also shall be at least one registered senior assistant purser and one registered junior assistant purser.

(e) A person may not employ an individual to serve in, and an individual may not serve in, a grade of staff officer on a vessel, when that staff officer is required by this section to be registered, if the individual does not have a certificate of registry as staff officer in that grade. A person (including an individual) violating this subsection is liable to the United States Government for a civil penalty of $100. However, if a registered staff officer is not available at the time of sailing, the vessel may sail with an unregistered staff officer or without a staff officer.

(f) A staff officer may not be included in a vessel's certificate of inspection.

(g) A registered staff officer serving under this section who is a member of the Naval Reserve may wear on the officer's uniform special distinguishing insignia prescribed by the Secretary of the Navy.

(h) The uniform stripes, decoration, or other insignia worn by a staff officer shall be of gold braid or woven gold or silver material. A crewmember (except a staff officer) may not wear any uniform with a staff officer's identifying insignia.

§ 8303. Service under licenses issued without examination

An individual issued a license without examination before October 29, 1941, to serve

as master, mate, or engineer on a vessel not subject to inspection under part B of this subtitle, may not serve under authority of that license on a vessel that is subject to inspection under part B.

§ 8304. Implementing the Officers' Competency Certificates Convention, 1936

(a) In this section, "high seas" means waters seaward of the Boundary Line.

(b) The Officers' Competency Certificates Convention, 1936 (International Labor Organization Draft Convention Numbered 53, on the minimum requirement of professional capacity for masters and officers on board merchant vessels), as ratified by the President on September 1, 1938, with understandings appended, and this section apply to a documented vessel operating on the high seas except—

(1) a public vessel;

(2) a wooden vessel of primitive build, such as a dhow or junk;

(3) a barge; and

(4) a vessel of less than 200 gross tons.

(c) A person may not engage or employ an individual to serve as, and an individual may not serve as, a master, mate, or engineer on a vessel to which this section applies, if the individual does not have a license issued under section 7101 of this title authorizing service in the capacity in which the individual is to be engaged or employed.

(d) A person (including an individual) violating this section is liable to the United States Government for a civil penalty of $100.

(e) A license issued to an individual to whom this section applies is a certificate of competency.

(f) A designated official may detain a vessel to which this section applies (by written order served on the owner, charterer, managing operator, agent, master, or individual in charge of the vessel) when there is reason to believe that the vessel is about to proceed from a port of the United States to the high seas in violation of this section or a provision of the convention described in subsection (b) of this section. The vessel may be detained until the vessel complies with this section. Clearance may not be granted to a vessel ordered detained under this section.

(g) A foreign vessel to which the convention described in subsection (b) of this section applies, on the navigable waters of the United States, is subject to detention under subsection (f) of this section, and to an examination that may be necessary to decide if there is compliance with the convention.

(h) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel detained under subsection (f) or (g) of this section may appeal the order within 5 days as provided by regulation.

(i) An officer or employee of the Customs Service may be designated to enforce this section.

CHAPTER 85—PILOTS

Sec.

8501. State regulation of pilots.

8502. Federal pilots required.

§ 8501. State regulation of pilots

(a) Except as otherwise provided in this part, pilots in the bays, rivers, harbors, and ports of the United States shall be regulated only in conformity with the laws of the States.

(b) The master of a vessel entering or leaving a port on waters that are a boundary between 2 States, and that is required to have a pilot under this section, may employ a pilot licensed or authorized by the laws of either of the 2 States.

(c) A State may not adopt a regulation or provision that discriminates in the rate of pilotage or half-pilotage between vessels sailing between the ports of one State and vessels sailing between the ports of different States, or against vessels because of their means of propulsion, or against public vessels of the United States.

(d) A State may not adopt a regulation or provision that requires a coastwise vessel to take a pilot licensed or authorized by the laws of a State if the vessel—

(1) is propelled by machinery and subject to inspection under part B of this subtitle; or

(2) is subject to inspection under chapter 37 of this title.

(e) Any regulation or provision violating this section is void.

§ 8502. Federal pilots required

(a) A coastwise seagoing vessel, when not sailing on register and when underway (except on the high seas), shall be under the direction and control of a pilot licensed under section 7101 of this title if the vessel is—

(1) propelled by machinery and subject to inspection under part B of this subtitle; or

(2) subject to inspection under chapter 37 of this title.

(b) The fees charged for pilotage by pilots required under this section may not be more than the customary or legally established rates in the States in which the pilotage is performed.

(c) A State or political subdivision of a State may not impose on a pilot licensed under this subtitle an obligation to procure a State or other license, or adopt any other regulation that will impede the pilot in the performance of the pilot's duties under the laws of the United States.

(d) A State or political subdivision of a State may not levy pilot charges on a vessel lawfully piloted by a pilot required under this section.

(e) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel operated in violation of this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of $500. The vessel also is liable in rem for the penalty.

(f) An individual serving as a pilot without having a license required by this section or a regulation prescribed under this section is liable to the Government for a civil penalty of $500.

CHAPTER 87—UNLICENSED PERSONNEL

Sec.

8701. Merchant mariners' documents required.

8702. Certain crew requirements.

8703. Tankermen on tank vessels.

§ 8701. Merchant mariners' documents required

(a) This section applies to a merchant vessel of at least 100 gross tons except—

(1) a vessel operating only on rivers and lakes (except the Great Lakes);

(2) a barge (except a seagoing barge or a barge to which chapter 37 of this title applies);

(3) a fishing or whaling vessel or a yacht;

(4) a sailing school vessel with respect to sailing school instructors and sailing school students; and

(5) an oceanographic research vessel with respect to scientific personnel.

(b) A person may not engage or employ an individual, and an individual may not serve, on board a vessel to which this section applies if the individual does not have a merchant mariner's document issued to the individual under section 7302 of this title. Except for an individual required to be licensed or registered under this part, the document must authorize service in the capacity for which the holder of the document is engaged or employed.

(c) On a vessel to which section 10306 or 10503 of this title does not apply, an individual required by this section to hold a merchant mariner's document must exhibit it to the master of the vessel before the individual may be employed.

(d) A person (including an individual) violating this section is liable to the United States Government for a civil penalty of $500.

§ 8702. Certain crew requirements

(a) This section applies to a vessel of at least 100 gross tons except—

(1) a vessel operating only on rivers and lakes (except the Great Lakes);

(2) a barge (except a seagoing barge or a barge to which chapter 37 of this title applies);

(3) a fishing or whaling vessel or a yacht;

(4) a sailing school vessel with respect to sailing school instructors and sailing school students; and

(5) an oceanographic research vessel with respect to scientific personnel.

(b) A vessel may depart from a port of the United States only if at least—

(1) 75 percent of the crew in each department on board is able to understand any order spoken by the officers, and

(2) 65 percent of the deck crew (excluding licensed individuals) have merchant mariners' documents endorsed for a rating of at least able seaman, except that this percentage may be reduced to 50 percent on a vessel permitted under section 8104 of this title to maintain a 2-watch system.

(c) An able seaman is not required on a towing vessel operating on bays and sounds connected directly with the seas.

(d) An individual having a rating of less than able seaman may not be permitted at the wheel in ports, harbors, and other waters subject to congested vessel traffic, or under conditions of reduced visibility, adverse weather, or other hazardous circumstances.

(e) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel operated in violation of this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of $500.

§ 8703. Tankermen on tank vessels

(a) A vessel of the United States to which chapter 37 of this title applies, that has on board oil or hazardous material in bulk as cargo or cargo residue, shall have a specified number of the crew certified as tankermen as required by the Secretary. This requirement shall be noted on the certificate of inspection issued to the vessel.

(b) The Secretary shall prescribe procedures, standards, and qualifications for the issuance of certificates as tankermen, stating the types of oil or hazardous material that can be handled with safety to the vessel and the marine environment.

(c) A vessel to which section 3702(b) of this title applies shall have on board as a crewmember in charge of the transfer operation an individual certified as a tankerman (qualified for the grade of fuel transferred),

unless a master, mate, pilot, engineer, or operator licensed under section 7101 of this title is present in charge of the transfer. If the vessel does not have that individual on board, chapter 37 of this title applies to the vessel.

CHAPTER 89—SMALL VESSEL MANNING

§ 8901. Freight vessels

A freight vessel of less than 100 gross tons shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations.

§ 8902. Small passenger vessels

A small passenger vessel shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations.

§ 8903. Uninspected passenger vessels

An uninspected passenger vessel shall be operated by an individual licensed by the Secretary to operate that type of vessel, under prescribed regulations.

§ 8904. Towing vessels

A towing vessel that is at least 26 feet in length measured from end to end over the deck (exluding sheer), shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations.

§ 8905. Exemptions

(a) Section 8903 of this title applies to a recreational vessel operated in dealer demonstrations only if the Secretary decides that the application of section 8903 is necessary for recreational vessel safety under section 4302(d) of this title.

(b) Section 8904 of this title does not apply to a vessel of less than 200 gross tons engaged in the offshore mineral and oil industry if the vessel has offshore mineral and oil industry sites or equipment as its ultimate destination or place of departure.

§ 8906. Penalty

An owner, charterer, managing operator, agent, master, or individual in charge of a vessel operated in violation of this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of $1,000. The vessel also is liable in rem for the penalty.

CHAPTER 91—TANK VESSEL MANNING STANDARDS

§ 9101. Standards for foreign tank vessels

(a) The Secretary shall—

(1) periodically evaluate the manning, training, qualification, and watchkeeping standards prescribed by the certificating country of a foreign vessel to which chapter 37 of this title applies, that operates on the navigable waters of the United States and transfers oil or hazardous material in a port or place under the jurisdiction of the United States; and

(2) after each evaluation made under clause (1) of this subsection, decide whether the foreign country, whose system for licensing and certification of seamen was evaluated, has standards that are equivalent to or more stringent than United States standards or international standards accepted by the United States.

(b) A foreign vessel to which chapter 37 of this title applies that has on board oil or hazardous material in bulk as cargo or cargo residue shall have a specified number of personnel certified as tankerman or equivalent, as required by the Secretary, when the vessel transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States. The requirement of this subsection shall be noted in applicable terminal operating procedures. A transfer operation may take place only if the crewmember in charge is capable of clearly understanding instructions in English.

§ 9102. Standards for tank vessels of the United States

(a) The Secretary shall prescribe standards for the manning of each vessel of the United States to which chapter 37 of this title applies, related to the duties, qualifications, and training of the officers and crew of the vessel, including standards related to—

(1) instruction in vessel and cargo handling and vessel navigation under normal operating conditions in coastal and confined waters and on the high seas;

(2) instruction in vessel and cargo handling and vessel navigation in emergency situations and under marine casualty or potential casualty conditions;

(3) qualifications for licenses by specific type and size of vessels;

(4) qualifications for licenses by use of simulators for the practice or demonstration of marine-oriented skills;

(5) minimum health and physical fitness criteria for various grades of licenses and certificates;

(6) periodic retraining and special training for upgrading positions, changing vessel type or size, or assuming new responsibilities; and

(7) decisions about licenses and certificates, conditions of licensing or certification, and periods of licensing or certification by reference to experience, amount of training completed, and regular performance testing.

(b) The Secretary shall waive the application of criteria required by subsection (a)(5) of this section for an individual having a license or certificate (including a renewal of the license or certificate) in effect on October 17, 1978. When the waiver is granted, the Secretary may prescribe conditions for the license or certificate and its renewal, as the Secretary decides are reasonable and necessary for the safety of a vessel on which the individual may be employed.

CHAPTER 93—GREAT LAKES PILOTAGE

§ 9301. Definitions

In this chapter—

(1) "Canadian registered pilot" means an individual (except a regular crewmember of a vessel) who is registered by Canada on the same basis as an individual registered under section 9303 of this title.

(2) "Great Lakes" means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far east as Saint Regis, and adjacent port areas.

(3) "United States registered pilot" means an individual (except a regular crewmember of a vessel) who is registered under section 9303 of this title.

§ 9302. Great Lakes pilots required

(a)(1) Except as provided in subsections (d) and (e) of this section, each vessel of the United States operating on register and each foreign vessel shall engage a United States or Canadian registered pilot for the route being navigated who shall—

(A) in waters of the Great Lakes designated by the President, direct the navigation of the vessel subject to the customary authority of the master; and

(B) in waters of the Great Lakes not designated by the President, be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master.

(2) The President shall make water designations under this subsection with regard to the public interest, the effective use of navigable waters, marine safety, and the foreign relations of the United States.

(b) An individual of a vessel licensed for navigation on the Great Lakes under section 7101 of this title, or equivalent provisions of Canadian law, and qualified for the route being navigated, may serve as the pilot required on waters not designated by the President.

(c) The authority extended under subsections (a) and (b) of this section to a Canadian registered pilot or other Canadian licensed officer to serve on certain vessels in United States waters of the Great Lakes shall continue as long as Canada extends reciprocity to United States registered pilots and other individuals licensed by the United States for pilotage service in Canadian waters of the Great Lakes.

(d) A vessel may be operated on the United States waters of the Great Lakes without a United States or Canadian registered pilot when—

(1) the Secretary notifies the master that a registered pilot is not available; or

(2) the vessel or its cargo is in distress or jeopardy.

(e) A Canadian vessel regularly operating on the Great Lakes or between ports on the Great Lakes and the Saint Lawrence River, with only an occasional voyage to ports in the maritime provinces of Canada in the Canadian coastal trade, is exempt from subsections (a) and (b) of this section as long as Canada permits enrolled vessels of the United States to be operated on Canadian waters of the Great Lakes under the direction of individuals licensed under section 7101 of this title.

§ 9303. United States registered pilot service

(a) The Secretary shall prescribe by regulation standards of competency to be met by each applicant for registration under this chapter. An applicant must—

(1) have a license as master, mate, or pilot issued under section 7101 of this title;

(2) have acquired at least 24 months licensed service or equivalent experience on vessels or integrated towing vessels and tows of at least 4,000 gross tons, operating on the Great Lakes or oceans, with a minimum of 6 months of that service or experience having been on the Great Lakes; and

(3) agree that, if appointed as a United States registered pilot, the applicant will be available for service when required.

(b) The Secretary shall issue to each registered pilot under this chapter a certificate of registration describing the areas within which the pilot may serve. The pilot shall carry the certificate when in the service of a vessel.

(c) The Secretary shall prescribe by regulation the duration of validity of registration.

(d) The Secretary may prescribe by regulation the conditions for service by United States registered pilots, including availability for service.

(e) Subject to sections 551-559 of title 5, the Secretary may suspend or revoke a certificate of registration issued under this section if the holder fails to comply with a regulation prescribed under this chapter. Suspension or revocation of the holder's license under chapter 77 of this title includes the holder's certificate of registration.

(f) The Secretary shall prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.

§ 9304. Pilotage pools

(a) The Secretary may authorize the formation of a pool by a voluntary association of United States registered pilots to provide for efficient dispatching of vessels and rendering of pilotage services.

(b) For pilotage pools, the Secretary may—

(1) limit the number of the pools;

(2) prescribe regulations for their operation and administration;

(3) prescribe a uniform system of accounts;

(4) perform audits and inspections; and

(5) require coordination on a reciprocal basis with similar pool arrangements authorized by the appropriate agency of Canada.

§ 9305. Agreements with Canada

To provide for a coordinated system of pilotage service on the Great Lakes, the Secretary, subject to the concurrence of the Secretary of State, may make agreements with the appropriate agency of Canada to—

(1) fix the number of pilots to be registered in each country;

(2) provide for participation on an equitable basis;

(3) prescribe joint or identical rates and charges;

(4) coordinate pool operations; and

(5) establish conditions for services by registered pilots.

§ 9306. State regulation prohibited

A State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.

§ 9307. Great Lakes Pilotage Advisory Committee

(a) The Secretary may establish a Great Lakes Pilotage Advisory Committee. The Committee—

(1) may review proposed Great Lakes pilotage regulations and policies and make recommendations to the Secretary that the Committee considers appropriate;

(2) may make available to Congress recommendations that the Committee makes to the Secretary; and

(3) shall meet at the call of the Secretary.

(b) The Committee shall consist of 3 members appointed by the Secretary each of whom has at least 5 years practical experience in maritime operations. The term of each member is for a period of not more than 5 years, specified by the Secretary. Before filling a position on the Committee, the Secretary shall publish a notice in the Federal Register soliciting nominations for membership on the Committee.

(c) When attending meetings or otherwise serving at the request of the Secretary, a member of the Committee (except a member regularly employed by the United States Government) may be paid at a rate of not more than $75 a day. When serving away from home or regular place of business, the member may be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5 for individuals employed intermittently in the Government service.

§ 9308. Penalties

(a) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel knowingly allowing the vessel to be operated in violation of section 9302 of this title is liable to the United States Government for a civil penalty of $500 for each day during which the vessel is in violation. The vessel also is liable in rem for the penalty.

(b) An individual who directs the navigation of a vessel in violation of section 9302 of this title is liable to the Government for a civil penalty of $500 for each day during which the violation occurs.

(c) A person violating a regulation prescribed under section 9303 of this title is liable to the Government for a civil penalty of $500.

PART G—MERCHANT SEAMEN PROTECTION AND RELIEF

CHAPTER 101—GENERAL

§ 10101. Definitions

In this part—

(1) "master" means the individual having command of a vessel owned by a citizen of the United States.

(2) "owner" means the person to whom the vessel belongs.

(3) "seaman" means an individual (except scientific personnel, a sailing school instructor, or a sailing school student) engaged or employed in any capacity on board a vessel owned by a citizen of the United States.

§ 10102. Designations and duties of shipping commissioners

(a) The Secretary shall designate officers, employees, and members of the Coast Guard to act as shipping commissioners under this part. The Secretary may designate officers and employees of the Customs Service as shipping commissioners.

(b) The general duties of shipping commissioners are to supervise the engagement and discharge of seamen.

(c) The owner, charterer, managing operator, agent, or master of the vessel shall perform the duties of shipping commissioner when a shipping commissioner is not available.

§ 10103. Reports

(a) A master of a vessel to which section 8701(a) of this title applies, who engages or discharges a seaman without a shipping commissioner being present, shall submit reports in the form, content, and manner of filing as prescribed by regulation, to ensure compliance with laws related to manning and the engagement and discharge of seamen.

(b) This section does not apply to a ferry or towing vessel operated in connection with a ferry operation, employed only in trades other than with foreign ports, lakes, bays, sounds, bayous, canals, or harbors.

§ 10104. Regulations

The Secretary may prescribe regulations to carry out this part.

CHAPTER 103—FOREIGN AND INTERCOASTAL VOYAGES

§ 10301. Application

(a) Except as otherwise specifically provided, this chapter applies to a vessel of the United States—

(1) on a voyage between a port in the United States and a port in a foreign country (except a port in Canada, Mexico, or the West Indies); or

(2) of at least 75 gross tons on a voyage between a port of the United States on the Atlantic Ocean and a port of the United States on the Pacific Ocean.

(b) This chapter does not apply to a vessel on which the seamen are entitled by custom or agreement to share in the profit or result of a voyage.

(c) Unless otherwise provided, this chapter does not apply to a foreign vessel.

§ 10302. Shipping articles agreements

(a) Before proceeding on a voyage, the master of a vessel to which this chapter applies shall make a shipping articles agreement in writing with each seaman in the crew.

(b) The agreement shall contain the following:

(1) the nature, and, as far as practicable, the duration of the intended voyage, and the port or country in which the voyage is to end.

(2) the number and description of the crew and the capacity in which each seaman is to be engaged.

(3) the time at which each seaman is to be on board to begin work.

(4) the amount of wages each seaman is to receive.

(5) regulations about conduct on board, and information on fines, short allowance of provisions, and other punishment for misconduct provided by law.

(6) a scale of the provisions that are to be provided each seaman.

(7) any stipulation in reference to advances and allotments of wages.

(8) other matters not contrary to law.

§ 10303. Provisions

(a) A seaman shall be served at least 3 meals a day that total at least 3,100 calories, including adequate water and adequate protein, vitamins, and minerals in accordance with the United States Recommended Daily Allowances.

(b) The text of subsection (a) of this section shall be included in the agreement required by section 10302 of this title. A copy of the text also shall be posted in a conspicuous place in the galley and forecastle of each vessel.

(c) This section does not apply to a fishing or whaling vessel or a yacht.

§ 10304. Form of agreement

The form of the agreement required by section 10302 of this title shall be in substance as follows:

UNITED STATES OF AMERICA

(Date and place of first signature of agreement):

It is agreed between the master and seamen of the , of which is at present master, or whoever shall go for master, now bound from the port of to , (here the voyage is to be described, and the places named at which the vessel is to touch, or if that cannot be done, the general nature and probable length of the voyage is to be stated).

The seamen agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the master, or of an individual who lawfully succeeds the master, and of their superior officers in everything related to the vessel, and the stores and cargo of the vessel, whether on board, in boats, or on shore. In consideration of this service by the seamen to be performed, the master agrees to pay the crew, as wages, the amounts beside their names respectively expressed, and to supply them with provisions according to the annexed scale.

It is agreed that any embezzlement, or willful or negligent destruction of any part of the vessel's cargo or stores, shall be made good to the owner out of the wages of the person guilty of the embezzlement or destruction.

If an individual holds himself or herself out as qualified for a duty which the individual proves incompetent to perform, the individual's wages shall be reduced in proportion to the incompetency.

It also is agreed that if a seaman considers himself or herself to be aggrieved by any breach of this agreement or otherwise, the seaman shall present the complaint to the master or officer in charge of the vessel, in a quiet and orderly manner, who shall take steps that the case requires.

It also is agreed that (here any other stipulations may be inserted to which the parties agree, and that are not contrary to law).

In witness whereof, the parties have subscribed their names to this agreement, on the dates beside their respective signatures.

Signed by , master, on the day of , nineteen hundred and .

Signature of seaman	Time of service:
Birthplace	Months
Age	Days
Height:	Hospital money
Feet	Whole wages
Inches	Wages due
Description:	Place and time of entry
Complexion	Time at which seaman is to be on board
Hair	In what capacity
Wages each month	Shipping commissioner's signature or initials
Wages each voyage	Allotment payable to
Advance wages	Conduct qualifications
Amount of monthly allotment	

NOTE.—In the place for signature and descriptions of individuals engaged after the first departure of the vessel, the entries are to be made as above, except that the signature of the consul or vice consul, customs officer, or witness before whom the individual is engaged, is to be entered.

§ 10305. Manner of signing agreement

(a) The agreement required by section 10302 of this title shall be signed—

(1) first by the master and dated at that time, after which each seaman shall sign; and

(2) in the presence of a shipping commissioner.

(b) When the crew is first engaged, the agreement shall be signed in duplicate. One of the copies shall be retained by the shipping commissioner. The other copy shall contain space for the description and signatures of seamen engaged subsequent to the first making of the agreement, and shall be delivered to the master.

(c) An agreement signed before a shipping commissioner shall be acknowledged and signed by the commissioner on the agreement in the manner and form prescribed by regulation. The acknowledgment and certification shall include a statement by the commissioner that the seaman—

(1) has read the agreement;

(2) is acquainted with and understands its conditions; and

(3) has signed it freely and voluntarily when sober.

§ 10306. Exhibiting merchant mariners' documents

Before signing the agreement required by section 10302 of this title, each individual required by section 8701 of this title to have a merchant mariner's document shall exhibit to the shipping commissioner a document issued to the individual, appropriately endorsed for the capacity in which the individual is to serve.

§ 10307. Posting agreements

At the beginning of a voyage, the master shall have a legible copy of the agreement required by section 10302 of this title, omitting signatures, exhibited in a part of the vessel accessible to the crew. A master violating this section is liable to the United States Government for a civil penalty of $100.

§ 10308. Foreign engagements

(a) When a seaman is engaged outside the United States, the agreement required by section 10302 of this title shall be signed in the presence of a consular officer. If a consular officer is not available at the port of engagement, the seaman may be engaged, and the agreement shall be signed in the next port at which a consular officer is available.

(b) A master engaging a seaman in violation of this section is liable to the United States Government for a civil penalty of $100. The vessel also is liable in rem for the penalty.

§ 10309. Engaging seamen to replace those lost by desertion or casualty

(a) If a desertion or casualty results in the loss of at least one seaman, the master shall engage, if obtainable, a number equal to the number of seamen of whose services the master has been deprived. The new seaman must have at least the same grade or rating as the seaman whose place the new seaman fills. The master shall report the loss and replacement to a consular officer at the first port at which the master arrives.

(b) The master is liable to the United States Government for a civil penalty of $200 for each report not made. The vessel also is liable in rem for the penalty.

(c) This section does not apply to a fishing or whaling vessel or a yacht.

§ 10310. Discharge

A master shall deliver to a seaman or a shipping commissioner a full and true account of the seaman's wages and all deductions at least 48 hours before paying off or discharging the seaman. A master failing to deliver the account is liable to the United States Government for a civil penalty of $50.

§ 10311. Certificates of discharge

(a) On discharging a seaman and paying the seaman's wages, the shipping commissioner shall provide the seaman with a certificate of discharge. The form of the certificate shall be prescribed by regulation. It shall contain—

(1) the name of the seaman;

(2) the citizenship or nationality of the seaman;

(3) the number of the seaman's merchant mariner's document;

(4) the name and official number of the vessel;

(5) the nature of the voyage (foreign, intercoastal, or coastwise);

(6) the propulsion class of the vessel;

(7) the date and place of engagement;

(8) the date and place of discharge; and

(9) the seaman's capacity on the voyage.

(b) The certificate of discharge may not contain a reference about the character or ability of the seaman. The certificate shall be signed by the master, the seaman, and the shipping commissioner as witness.

(c) A certificate of discharge may not be issued if the seaman holds a continuous discharge book. The entries shall be made in the discharge book in the same manner as the entries required by subsection (a) of this section.

(d)(1) A record of each discharge shall be maintained by the Secretary in the manner and location prescribed by regulation. The records may not be open for general or public use or inspection.

(2) A duplicate of a record of discharge shall be issued to a seaman at a cost prescribed by regulation.

(e) This section does not apply to a fishing or whaling vessel or a yacht.

§ 10312. Settlements on discharge

(a) When discharge and settlement are completed, the master or owner and each seaman shall sign the agreement required by section 10302 of this title in the presence of a shipping commissioner. The commissioner shall sign the agreement and retain a copy. When signed, it shall serve as a mutual release of all claims for wages for the voyage.

(b) In a dispute about wages or deductions, if the parties agree in writing to

submit the dispute to a shipping commissioner, the award made by the commissioner is conclusive in any subsequent legal proceeding. A document signed and sealed by a shipping commissioner purporting to be the award is prima facie evidence of the award.

(c) In a proceeding before a shipping commissioner related to the wages, claims, or discharge of a seaman, the shipping commissioner may call on the owner, charterer, managing operator, agent, master, or a seaman to produce logbooks or other documents about a matter in question, and may summon before the commissioner and examine any person on the matter. An owner, charterer, managing operator, agent, master, or seaman failing on summons to produce a document in the possession or control of the owner, charterer, managing operator, agent, master, or seaman, or to give evidence, without reasonable cause, is liable to the United States Government for a civil penalty of $100. On application of the shipping commissioner, the owner, charterer, managing operator, agent, master, or seaman may be punished by a district court of the United States as in other cases of contempt of court.

(d) On request, a certified copy of an agreement may be provided to a party to the agreement and is admissible in evidence with the effect of the original in any subsequent proceeding.

(e) When a seaman has been discharged before a shipping commissioner, only the agreement is evidence of the release or satisfaction of any claim.

(f) If a discharge is made under this section, the shipping commissioner, at the request of the master, shall provide the master with a signed statement of the total amount of wages paid. Between the master and the employer, the statement shall be received as evidence that the master has made the payments as stated.

§ 10313. Wages

(a) A seaman's entitlement to wages and provisions begins when the seaman begins work or when specified in the agreement required by section 10302 of this title for the seaman to begin work or be present on board, whichever is earlier.

(b) Wages are not dependent on the earning of freight by the vessel. When the loss or wreck of the vessel ends the service of a seaman before the end of the period contemplated in the agreement, the seaman is entitled to wages for the period of time actually served. The seaman shall be deemed a destitute seaman under section 11104 of this title. This subsection applies to a fishing or whaling vessel but not a yacht.

(c) When a seaman who has signed an agreement is discharged improperly before the beginning of the voyage or before one month's wages are earned, without the seaman's consent and without the seaman's fault justifying discharge, the seaman is entitled to receive from the master or owner, in addition to wages earned, one month's wages as compensation.

(d) A seaman is not entitled to wages for a period during which the seaman—

(1) unlawfully failed to work when required, after the time fixed by the agreement for the seaman to begin work; or

(2) lawfully was imprisoned for an offense, unless a court hearing the case otherwise directs.

(e) After the beginning of the voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage. A demand may not be made before the expiration of 5 days from the beginning of the voyage, not more than once in 5 days, and not more than once in the same port on the same entry. If a master does not comply with this subsection, the seaman is released from the agreement and is entitled to payment of all wages earned. Notwithstanding a release signed by a seaman under section 10312 of this title, a court having jurisdiction may set aside, for good cause shown, the release and take action that justice requires. This subsection does not apply to a fishing or whaling vessel or a yacht. However, this subsection applies to a vessel taking oysters.

(f) At the end of a voyage, the master shall pay each seaman the balance of wages due the seaman within 24 hours after the cargo has been discharged or within 4 days after the seaman is discharged, whichever is earlier. When a seaman is discharged and final payment of wages is delayed for the period permitted by this subsection, the seaman is entitled at the time of discharge to one-third of the wages due the seaman.

(g) When payment is not made as provided under subsection (f) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.

(h) Subsections (f) and (g) of this section do not apply to a fishing or whaling vessel or a yacht. However, subsections (f) and (g) apply to a vessel taking oysters.

(i) This section applies to a seaman on a foreign vessel when in a harbor of the United States. The courts are available to the seaman for the enforcement of this section.

§ 10314. Advances

(a)(1) A person may not—

(A) pay a seaman wages in advance of the time when the seaman has earned the wages;

(B) pay advance wages of the seaman to another person; or

(C) make to another person an order, note, or other evidence of indebtedness of the wages, or pay another person, for the engagement of seamen when payment is deducted or to be deducted from the seaman's wage.

(2) A person violating this subsection is liable to the United States Government for a civil penalty of not more than $500. A payment made in violation of this subsection does not relieve the vessel or the master from the duty to pay all wages after they have been earned.

(b) A person demanding or receiving from a seaman or an individual seeking employment as a seaman, remuneration for providing the seaman or individual with employment, is liable to the Government for a civil penalty of not more than $500.

(c) This section applies to a foreign vessel when in waters of the United States. An owner, charterer, managing operator, agent, or master of a foreign vessel violating this section is liable to the Government for the same penalty as an owner, charterer, managing operator, agent, or master of a vessel of the United States for the same violation.

(d) The owner, charterer, managing operator, agent, or master of a vessel seeking clearance from a port of the United States shall present the agreement required by section 10302 of this title at the office of clearance. Clearance may be granted to a vessel only if this section has been complied with.

(e) This section does not apply to a fishing or whaling vessel or a yacht. However, this section applies to a vessel taking oysters.

§ 10315. Allotments

(a) Under prescribed regulations, a seaman may stipulate as follows in the agreement required by section 10302 of this title for an allotment of any part of the wages the seaman may earn:

(1) to the seaman's grandparents, parents, spouse, sister, brother, or children;

(2) to an agency designated by the Secretary of the Treasury to handle applications for United States savings bonds, to purchase bonds for the seaman; and

(3) for deposits to be made in an account for savings or investment opened by the seaman and maintained in the seaman's name at a savings bank or a savings institution in which the accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) An allotment is valid only if made in writing and signed by and approved by a shipping commissioner. The shipping commissioner shall examine allotments and the parties to them to enforce compliance with the law. Stipulations for allotments made at the beginning of a voyage shall be included in the agreement and shall state the amounts and times of payment and the person to whom payments are to be made.

(c) Only an allotment complying with this section is lawful. A person falsely claiming qualification as an allottee under this section is liable to the United States Government for a civil penalty of not more than $500.

(d) The owner, charterer, managing operator, agent, or master of a vessel seeking clearance from a port of the United States shall present the agreement at the office of clearance. Clearance may be granted to a vessel only if this section has been complied with.

(e) This section applies to a foreign vessel when in waters of the United States. An owner, charterer, managing operator, agent, or master of a foreign vessel violating this section is liable to the Government for the same penalty as an owner, charterer, managing operator, agent, or master of a vessel of the United States for the same violation.

§ 10316. Trusts

Sections 10314 and 10315 of this title do not prevent an employer from making deductions from the wages of a seaman, with the written consent of the seaman, if—

(1) the deductions are paid into a trust fund established only for the benefit of seamen employed by that employer, and the families and dependents of those seamen (or of those seamen, families, and dependents jointly with other seamen employed by other employers, and the families and dependents of the other seamen); and

(2) the payments are held in trust to provide, from principal or interest, or both, any of the following benefits for those seamen and their families and dependents:

(A) medical or hospital care, or both.

(B) pensions on retirement or death of the seaman.

(C) life insurance.

(D) unemployment benefits.

(E) compensation for illness or injuries resulting from occupational activity.

(F) sickness, accident, and disability compensation.

(G) purchasing insurance to provide any of the benefits specified in this section.

§ 10317. Loss of lien and right to wages

A master or seaman by any agreement other than one provided for in this chapter

may not forfeit the master's or seaman's lien on the vessel or be deprived of a remedy to which the master or seaman otherwise would be entitled for the recovery of wages. A stipulation in an agreement inconsistent with this chapter, or a stipulation by which a seaman consents to abandon a right to wages if the vessel is lost, or to abandon a right the seaman may have or obtain in the nature of salvage, is void.

§ 10318. Wages on discharge in foreign ports

(a) When a master or seaman applies to a consular officer for the discharge of the seaman, the consular officer shall require the master to pay the seaman's wages if it appears that the seaman has carried out the agreement required by section 10302 of this title or otherwise is entitled to be discharged. Then the consular officer shall discharge the seaman. A consular officer shall require the payment of extra wages only as provided in this section or in chapter 109 of this title.

(b) When discharging a seaman, a consular officer who fails to require the payment of the wages due a seaman at the time, and of the extra wages due under subsection (a) of this section, is accountable to the United States Government for the total amount.

(c) A seaman discharged under this section with the consent of the seaman is entitled to wages up to the time of discharge, but not for any additional period.

(d) If the seaman is discharged involuntarily, and it appears that the discharge was not because of neglect of duty, incompetency, or injury incurred on the vessel, the master shall provide the seaman with employment on a vessel agreed to by the seaman or shall provide the seaman with one month's extra wages.

(e) Expenses for the maintenance and return of an ill or injured seaman to the United States shall be paid by the Secretary of State. If a seaman is incapacitated by illness or injury and prompt discharge is necessary, but a personal appearance of the master before a consular officer is impracticable, the master may provide transportation to the seaman to the nearest consular officer for discharge.

(f) A deduction from wages of the seaman is permitted only if the deduction appears in the account of the seaman required to be delivered under section 10310 of this title, except for matters arising after delivery of the account, in which case a supplementary account is required. During a voyage, the master shall record in the official logbook the matters about which deductions are to be made with the amounts of the deductions. The entries shall be made as the matters occur. The master shall produce the official logbook at the time of payment of wages, and also before a competent authority on the hearing of any complaint or question about the payment of wages.

§ 10319. Costs of a criminal conviction

In a proceeding about a seaman's wages, if it is shown that the seaman was convicted during the voyage of an offense by a competent tribunal and sentenced by the tribunal, the court hearing the case may direct that a part of the wages due the seaman, but not more than $15, be applied to reimburse the master for costs properly incurred in procuring the conviction and sentence.

§ 10320. Records of seamen

The Secretary may prescribe regulations for reporting by a master of matters about the engagement, discharge, or service of seamen that may be needed in keeping central records of seamen.

§ 10321. General penalty

The owner, charterer, managing operator, agent, or master of a vessel on which a seaman is carried in violation of this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of $200 for each seaman carried in violation. The vessel also is liable in rem for the penalty.

CHAPTER 105—COASTWISE VOYAGES

§ 10501. Application

(a) Except for a vessel to which chapter 103 of this title applies, this chapter applies to a vessel of at least 50 gross tons on a voyage between a port in one State and a port in another State (except an adjoining State).

(b) This chapter does not apply to a vessel on which the seamen are entitled by custom or agreement to share in the profit or result of a voyage.

(c) Unless otherwise provided, this chapter does not apply to a foreign vessel.

§ 10502. Shipping articles agreements

(a) Before proceeding on a voyage, the master of a vessel to which this chapter applies shall make a shipping articles agreement in writing with each seaman on board, declaring the nature of the voyage or the period of time for which the seaman is engaged.

(b) The agreement shall include the date and hour on which the seaman must be on board to begin the voyage.

(c) The agreement may not contain a provision on the allotment of wages or a scale of provisions.

§ 10503. Exhibiting merchant mariners' documents

Before signing the agreement required by section 10502 of this title, a seaman required by section 8701 of this title to have a merchant mariner's document shall exhibit to the master a document issued to the seaman and appropriately endorsed for the capacity in which the seaman is to serve.

§ 10504. Wages

(a) After the beginning of a voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage. A demand may not be made before the expiration of 5 days from the beginning of the voyage, not more than once in 5 days, and not more than once in the same port on the same entry. If a master does not comply with this subsection, the seaman is released from the agreement required by section 10502 of this title and is entitled to payment of all wages earned. Notwithstanding a release signed by a seaman under section 10312 of this title, a court having jurisdiction may set aside, for good cause shown, the release and take action that justice requires. This subsection does not apply to a fishing or whaling vessel or a yacht. However, this subsection applies to a vessel taking oysters.

(b) The master shall pay a seaman the balance of wages due the seaman within 2 days after the termination of the agreement required by section 10502 of this title or when the seaman is discharged, whichever is earlier.

(c) When payment is not made as provided under subsection (b) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.

(d) Subsections (b) and (c) of this section do not apply to a fishing or whaling vessel or a yacht. However, subsections (b) and (c) apply to a vessel taking oysters.

(e) This section applies to a seaman on a foreign vessel when a in harbor of the United States. The courts are available to the seaman for the enforcement of this section.

§ 10505. Advances

(a)(1) A person may not—

(A) pay a seaman wages in advance of the time when the seaman has earned the wages;

(B) pay advance wages of the seaman to another person; or

(C) make to another person an order, note, or other evidence of indebtedness of the wages, or pay another person, for the engagement of seamen when payment is deducted or to be deducted from the seaman's wage.

(2) A person violating this subsection is liable to the United States Government for a civil penalty of not more than $100. A payment made in violation of this subsection does not relieve the vessel or the master from the duty to pay all wages after they have been earned.

(b) A person demanding or receiving from a seaman or an individual seeking employment as a seaman, remuneration for providing the seaman or individual with employment, is liable to the Government for a civil penalty of not more than $500.

(c) The owner, charterer, managing operator, agent, or master of a vessel seeking clearance from a port of the United States shall present the agreement required by section 10502 of this title at the office of clearance. Clearance may be granted to a vessel only if this section has been complied with.

(d) This section does not apply to a fishing or whaling vessel or a yacht. However, this section applies to a vessel taking oysters.

§ 10506. Trusts

Section 10505 of this title does not prevent an employer from making deductions from the wages of a seaman, with the written consent of the seaman, if—

(1) the deductions are paid into a trust fund established only for the benefit of seamen employed by that employer, and the families and dependents of those seamen (or of those seamen, families, and dependents jointly with other seamen employed by other employers, and the families and dependents of the other seamen); and

(2) the payments are held in trust to provide, from principal or interest, or both, any of the following benefits for those seamen and their families and dependents:

(A) medical or hospital care, or both.

(B) pensions on retirement or death of the seaman.

(C) life insurance.

(D) unemployment benefits.

(E) compensation for illness or injuries resulting from occupational activity.

(F) sickness, accident, and disability compensation.

(G) purchasing insurance to provide any of the benefits specified in this section.

§ 10507. Duties of shipping commissioners

(a) At the option of the owner or master of a vessel to which this chapter applies, a shipping commissioner may engage and discharge the crew.

(b) When a crew is engaged under this section, sections 10302, 10303, 10305, 10307, 10311, 10312, 10313(b)-(f), and 10321, and chapter 107 of this title apply.

§ 10508. General penalties

(a) A master who carries a seaman on a voyage without first making the agreement required by section 10502 of this title shall pay to the seaman the highest wage that was paid for a similar voyage within the 3 months before the time of engagement at the port or place at which the seaman was engaged. A seaman who has not signed an agreement is not bound by the applicable regulations, penalties, or forfeitures.

(b) A master engaging a seaman in violation of this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of $20. The vessel also is liable in rem for the penalty.

§ 10509. Penalty for failing to begin voyage

(a) A seaman who fails to be on board at the time contained in the agreement required by section 10502 of this title, without having given 24 hours' notice of inability to do so, shall forfeit, for each hour's lateness, one-half of one day's pay to be deducted from the seaman's wages if the lateness is recorded in the official logbook on the date of the violation.

(b) A seaman who does not report at all or subsequently deserts forfeits all wages.

(c) This section does not apply to a fishing or whaling vessel or a yacht.

CHAPTER 107—EFFECTS OF DECEASED SEAMEN

Sec.
10701. Application.
10702. Duties of masters.
10703. Procedures of masters.
10704. Duties of consular officers.
10705. Disposition of money, property, and wages by consular officers.
10706. Seamen dying in the United States.
10707. Delivery to district court.
10708. Sale of property.
10709. Distribution.
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10711. Penalties.

§ 10701. Application

(a) Except as otherwise specifically provided, this chapter applies to a vessel on a voyage between—

(1) a port of the United States and a port in a foreign country (except a port in Canada, Mexico, and the West Indies); and

(2) a port of the United States on the Atlantic Ocean and a port of the United States on the Pacific Ocean.

(b) This chapter does not apply to a vessel on which a seaman by custom or agreement is entitled to share in the profit or result of a voyage.

(c) This chapter does not apply to a foreign vessel.

§ 10702. Duties of masters

(a) When a seaman dies during a voyage, the master shall take charge of the seaman's money and property. An entry shall be made in the official logbook, signed by the master, the chief mate, and an unlicensed crewmember containing an inventory of the money and property and a statement of the wages due the seaman, with the total of the deductions to be made.

(b) On compliance with this chapter, the master shall obtain a written certificate of compliance from a shipping commissioner. Clearance may be granted to a foreign-bound vessel only when the certificate is received at the office of customs.

§ 10703. Procedures of masters

(a) If the vessel is proceeding to the United States when a seaman dies, the master shall deliver the seaman's money, property, and wages when the agreement required by this part is ended, as provided by regulations prescribed by the Secretary.

(b) If the vessel touches at a foreign port after the death of the seaman, the master shall report to the first available consular officer. The consular officer may require the master to deliver to the officer the money, property, and wages of the seaman. The consular officer shall give the master a receipt for the matters delivered and certify on the agreement the particulars of the delivery. When the agreement ends, the master shall deliver the receipt as prescribed by regulations.

(c) If the consular officer does not require the master to deliver the seaman's money, property, and wages, the officer shall so certify on the agreement, and the master shall dispose of the money, property, and wages as provided under subsection (a) of this section.

(d) A deduction from the account of a deceased seaman is valid only if certified by a proper entry in the official logbook.

§ 10704. Duties of consular officers

When a seaman dies outside the United States leaving money or property not on board a vessel, the consular officer nearest the place at which the money and property is located shall claim and take charge of it.

§ 10705. Disposition of money, property, and wages by consular officers

When money, property, or wages of a deceased seaman comes into possession of a consular officer, the officer may—

(1) sell the property and remit the proceeds and other money or wages of the seaman the officer has received, to the district court of the United States for the district in which the voyage begins or ends; or

(2) deliver the money, property, and wages to the district court.

§ 10706. Seamen dying in the United States

When a seaman dies in the United States and is entitled at death to claim money, property, or wages from the master or owner of a vessel on which the seaman served, the master or owner shall deliver the money, property, and wages as provided by regulations prescribed by the Secretary.

§ 10707. Delivery to district court

The Secretary shall provide for the delivery to a district court of the United States of the money, property, and wages of a deceased seaman within one week from the date of receipt.

§ 10708. Sale of property

A district court of the United States may direct the sale of any part of the property of a deceased seaman. Proceeds of the sale shall be held as wages of the seaman are held.

§ 10709. Distribution

(a)(1) If the money, property, and wages of a seaman, including proceeds from the sale of property, are not more then $1,500 in value, and subject to deductions it allows for expenses and at least 60 days after receiving the money, property, and wages, the court may deliver the money, property, and wages to a claimant proving to be—

(A) the seaman's surviving spouse or child;

(B) entitled to the money, property, and wages under the seaman's will or under a law or at common law; or

(C) entitled to secure probate, or take out letters of administration, although no probate or letters of administration have been issued.

(2) The court is released from further liability for the money, property, and wages distributed under paragraph (1) of this subsection.

(3) Instead of acting under paragraphs (1) and (2) of this subsection, the court may require probate or letters of administration to be taken out, and then deliver the money, property, and wages to the legal representative of the seaman.

(b) If the money, property, and wages are more than $1,500 in value, the court, subject to deductions for expenses, shall deliver the money, property, and wages to the legal representative of the seaman.

§ 10710. Unclaimed money, property, and wages

(a) When a claim for the money, property, or wages of a deceased seaman held by a district court of the United States has not been substantiated within 6 years after their receipt by the court, the court, if a subsequent claim is made, may allow or refuse the claim.

(b) If, after money, property, and wages have been held by the court for 6 years, it appears to the court that no claim will have to be satisfied, the property shall be sold. The money and wages and the proceeds from the sale shall be deposited in the Treasury trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown".

§ 10711. Penalties

An owner or master violating this chapter are each liable to the United States Government for a civil penalty of 3 times the value of the seaman's money, property, and wages involved or, if the value is not determined, of $200.

CHAPTER 109—PROCEEDINGS ON UNSEAWORTHINESS

Sec.
10901. Application.
10902. Complaints of unfitness.
10903. Proceedings on examination of vessel.
10904. Refusal to proceed.
10905. Complaints in foreign ports.
10906. Discharge of crew for unsuitability.
10907. Permission to make complaint.
10908. Penalty for sending unseaworthy vessel to sea.

§ 10901. Application

This chapter applies to a vessel of the United States except a fishing or whaling vessel or a yacht.

§ 10902. Complaints of unfitness

(a)(1) If the chief and second mates or a majority of the crew of a vessel ready to begin a voyage discover, before the vessel leaves harbor, that the vessel is unfit as to crew, hull, equipment, tackle, machinery, apparel, furniture, provisions of food or water, or stores to proceed on the intended voyage and require the unfitness to be inquired into, the master immediately shall apply to the district court of the United States at the place at which the vessel is located, or, if no court is being held at the place at which the vessel is located, to a judge or justice of the peace, for the appointment of surveyors. At least 2 complain-

ing seamen shall accompany the master to the judge or justice of the peace.

(2) A master failing to comply with this subsection is liable to the United States Government for a civil penalty of $500.

(b)(1) Any 3 seamen of a vessel may complain that the provisions of food or water for the crew are, at any time, of bad quality, unfit for use, or deficient in quantity. The complaint may be made to the commanding officer of a United States naval vessel, consular officer, Coast Guard shipping commissioner, or chief official of the Customs Service.

(2) The officer, commissioner, or official shall examine, or have examined, the provisions of food or water. If the provisions are found to be of bad quality, unfit for use, or deficient in quantity, the person making the findings shall certify to the master of the vessel which provisions are of bad quality, unfit for use, or deficient.

(3) The officer, commissioner, or official to whom the complaint was made shall—

(A) make an entry in the official logbook of the vessel on the results of the examination; and

(B) submit a report on the examination to the district court of the United States at which the vessel is to arrive, with the report being admissible into evidence in any legal proceeding.

(4) The master is liable to the Government for a civil penalty of not more than $100 each time the master, on receiving the certification referred to in paragraph (2) of this subsection—

(A) does not provide other proper provisions of food or water, when available, in place of the provisions certified as of bad quality or unfit for use;

(B) does not obtain sufficient provisions when the certification includes a finding of a deficiency in quantity; or

(C) uses provisions certified to be of bad quality or unfit for use.

§ 10903. Proceedings on examination of vessel

(a) On application made under section 10902(a) of this title, the judge or justice of the peace shall appoint 3 experienced and skilled marine surveyors to examine the vessel for the defects or insufficiencies complained of. The surveyors have the authority to receive and consider evidence necessary to evaluate the complaint. When the complaint involves provisions of food or water, one of the surveyors shall be a medical officer of the Public Health Service, if available. The surveyors shall make a report in writing, signed by at least 2 of them, stating whether the vessel is fit to proceed to sea or, if not, in what respect it is unfit, making appropriate recommendations about additional seamen, provisions, or stores, or about physical repairs, alterations, or additions necessary to make the vessel fit.

(b) On receiving the report, the judge or justice of the peace shall endorse on the report the judgment of the judge or justice on whether the vessel is fit to proceed on the voyage, and, if not, whether the vessel may proceed to another port at which the deficiencies can be corrected. The master and the crew shall comply with the judgment.

(c) The master shall pay all costs of the survey, report, and judgment. However, if the complaint of the crew appears in the report and judgment to have been without foundation, or if the complaint involved provisions of food or water, without reasonable grounds, the master or owner may deduct the amount of the costs and reasonable damages for the detention of the vessel, as determined by the judge or justice of the peace, from the wages of the complaining seamen.

(d) A master of a vessel violating this section who refuses to pay the costs and wages is liable to the United States Government for a civil penalty of $100 and is liable in damages to each person injured by the refusal.

§ 10904. Refusal to proceed

After a judgment under section 10903 of this title that a vessel is fit to proceed on the intended voyage, or after the order of a judgment to make up deficiencies is complied with, if a seaman does not proceed on the voyage, the unpaid wages of the seaman are forfeited.

§ 10905. Complaints in foreign ports

(a) When a complaint under section 10902(a) of this title is made in a foreign port, the procedures of this chapter shall be followed, with a consular officer performing the duties of the judge or justice of the peace.

(b) On review of the marine surveyors' report, the consular officer may approve and must certify any part of the report with which the officer agrees. If the consular officer dissents from any part of the report, the officer shall certify reasons for dissenting from that part.

§ 10906. Discharge of crew for unsuitability

When a survey is made at a foreign port, the surveyors shall state in the report whether, in their opinion, the vessel had been sent to sea unsuitably provided in any important particular, by neglect or design or through mistake or accident. If by neglect or design, and the consular officer approves the finding, the officer shall discharge a seaman requesting discharge and shall require the master to pay one month's wages to that seaman in addition to wages then due, or sufficient money for the return of the seaman to the nearest and most convenient port of the United States, whichever is the greater amount.

§ 10907. Permission to make complaint

(a) A master may not refuse to permit, deny the opportunity to, or hinder a seaman who wishes to make a complaint authorized by this chapter.

(b) A master violating this section is liable to the United States Government for civil penalty of $500.

§ 10908. Penalty for sending unseaworthy vessel to sea

A person that knowingly sends or attempts to send, or that is a party to sending or attempting to send, a vessel of the United States to sea, in an unseaworthy state that is likely to endanger the life of an individual, shall be fined not more than $1,000, imprisoned for not more than 5 years, or both.

CHAPTER 111—PROTECTION AND RELIEF

§ 11101. Accommodations for seamen

(a) On a merchant vessel of the United States the construction of which began after March 4, 1915 (except a yacht, pilot vessel, or vessel of less than 100 gross tons)—

(1) each place appropriated to the crew of the vessel shall have a space of at least 120 cubic feet and at least 16 square feet, measured on the floor or deck of that place, for each seaman or apprentice lodged in the vessel;

(2) each seaman shall have a separate berth and not more than one berth shall be placed one above another;

(3) the place or berth shall be securely constructed, properly lighted, drained, heated, and ventilated, properly protected from weather and sea, and, as far as practicable, properly shut off and protected from the effluvium of cargo or bilge water; and

(4) crew space shall be kept free from goods or stores that are not the personal property of the crew occupying the place in use during the voyage.

(b) In addition to the requirements of subsection (a) of this section, a merchant vessel of the United States that in the ordinary course of trade makes a voyage of more than 3 days' duration between ports and carries a crew of at least 12 seamen shall have a hospital compartment, suitably separated from other spaces. The compartment shall have at least one bunk for each 12 seamen constituting the crew (but not more than 6 bunks may be required).

(c) A steam vessel of the United States operating on the Mississippi River or its tributaries shall provide, under the direction and approval of the Secretary, an appropriate place for the crew that shall conform to the requirements of this section, as far as they apply to the steam vessel, by providing a properly heated sleeping room in the engineroom of the steam vessel properly protected from the cold, wind, and rain by means of suitable awnings or screens on either side of the guards or sides and forward, reaching from the boiler deck to the lower or main deck.

(d) A merchant vessel of the United States, the construction of which began after March 4, 1915, having more than 10 seamen on deck, shall have at least one light, clean, and properly heated and ventilated washing place. There shall be provided at least one washing outfit for each 2 seamen of the watch. A separate washing place shall be provided for the fireroom and engineroom seamen, if their number is more than 10, that shall be large enough to accommodate at least one-sixth of them at the same time, and have a hot and cold water supply and a sufficient number of washbasins, sinks, and shower baths.

(e) Forecastles shall be fumigated at intervals provided by regulations prescribed by the Secretary of Health and Human Services, with the approval of the Secretary, and shall have at least 2 exits, one of which may be used in emergencies.

(f) The owner, charterer, managing operator, agent, master, or licensed individual of a vessel not complying with this section is liable to the United States Government for a civil penalty of at least $50 but not more than $500.

§ 11102. Medicine chests

(a) A vessel of the United States on a voyage from a port in the United States to a foreign port (except to a Canadian port), and a vessel of the United States of at least 75 gross tons on a voyage between a port of

the United States on the Atlantic Ocean and Pacific Ocean, shall be provided with a medicine chest.

(b) The owner and master of a vessel not equipped as required by subsection (a) of this section or a regulation prescribed under subsection (a) are liable to the United States Government for a civil penalty of $500. If the offense was due to the fault of the owner, a master penalized under this section has the right to recover the penalty and costs from the owner.

§ 11103. Slop chests

(a) A vessel to which section 11102 of this title applies shall be provided with a slop chest containing sufficient clothing for the intended voyage for each seaman, including—

(1) boots or shoes;
(2) hats or caps;
(3) underclothing;
(4) outer clothing;
(5) foul weather clothing;
(6) everything necessary for the wear of a seaman; and
(7) a complete supply of tobacco and blankets.

(b) Merchandise in the slop chest shall be sold to a seaman desiring it, for the use of the seaman, at a profit of not more than 10 percent of the reasonable wholesale value of the merchandise at the port at which the voyage began.

(c) This section does not apply to a vessel on a voyage to Canada, Bermuda, the West Indies, Mexico, or Central America, or a fishing or whaling vessel.

§ 11104. Destitute seamen

(a) A consular officer shall provide, for a destitute seaman of the United States, subsistence and passage to a port of the United States in the most reasonable manner, at the expense of the United States Government and subject to regulations prescribed by the Secretary of State. A seaman, if able, shall be required to perform duties on the vessel giving the seaman passage, in accordance with the seaman's rating.

(b) A master of a vessel of the United States bound to a port of the United States shall take a destitute seaman on board at the request of a consular officer and transport the seaman to the United States. A master refusing to transport a destitute seaman when requested is liable to the United States Government for a civil penalty of $100. The certificate signed and sealed by a consular officer is prima facie evidence of refusal. A master is not required to carry a destitute seaman if the seaman's presence would cause the number of individuals on board to exceed the number permitted in the certificate of inspection or if the seaman has a contagious disease.

(c) Compensation for the transportation of destitute seamen to the United States who are unable to work shall be agreed on by the master and the consular officer, under regulations prescribed by the Secretary of State. However, the compensation may be not more the lowest passenger rate of the vessel, or 2 cents a mile, whichever is less.

(d) When a master of a vessel of the United States takes on board a destitute seaman unable to work, from a port or place not having a consular officer, for transportation to the United States or to a port at which there is a consular officer, the master or owner of the vessel shall be compensated reasonably under regulations prescribed by the Secretary of State.

§ 11105. Wages on discharge when vessel sold

(a) When a vessel of the United States is sold in a foreign country, the master shall deliver to the consular officer a certified crew list and the agreement required by this part. The master shall pay each seaman the wages due the seaman and provide the seaman with employment on board another vessel of the United States bound for the port of original engagement of the seaman or to another port agreed on. If employment cannot be provided, the master shall—

(1) provide the seaman with the means to return to the port of original engagement;
(2) provide the seaman passage to the port of original engagement; or
(3) deposit with the consular officer an amount of money considered sufficient by the officer to provide the seaman with maintenance and passage home.

(b) The consular officer shall endorse on the agreement the particulars of the payment, provision, or deposit made under this section.

(c) An owner of a vessel is liable to the United States Government for a civil penalty of $500 if the master does not comply with this section.

§ 11106. Wages on justifiable complaint of seamen

(a) Before a seaman on a vessel of the United States is discharged in a foreign country by a consular officer on the seaman's complaint that the agreement required by this part has been breached because the vessel is badly provisioned or unseaworthy, or against the officers for cruel treatment, the officer shall inquire about the complaint. If satisfied of the justice of the complaint, the consular officer shall require the master to pay the wages due the seaman plus one month's additional wages and shall discharge the seaman. The master shall provide the seaman with employment on another vessel or provide the seaman with passage on another vessel to the port of original engagement, to the most convenient port of the United States, or to some port agreeable to the seaman.

(b) When a vessel does not have sufficient provisions for the intended voyage, and the seaman has been forced to accept a reduced ration or provisions that are bad in quality or unfit for use, the seaman is entitled to recover from the master or owner an allowance, as additional wages, that the court hearing the case considers reasonable.

(c) Subsection (b) of this section does not apply when the reduction in rations was for a period during which the seaman willfully and without sufficient cause failed to perform duties or was lawfully under confinement on board or on shore for misconduct, unless that reduction can be shown to have been unreasonable.

(d) Subsection (b) of this section does not apply to a fishing or whaling vessel or a yacht.

§ 11107. Unlawful engagements void

An engagement of a seaman contrary to a law of the United States is void. A seaman so engaged may leave the service of the vessel at any time and is entitled to recover the highest rate of wages at the port from which the seaman was engaged or the amount agreed to be given the seaman at the time of engagement, whichever is higher.

§ 11108. Taxes

Wages due or accruing to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or a fisherman employed on a fishing vessel may not be withheld under the tax laws of a State or a political subdivision of a State. However, this section does not prohibit withholding wages of a seaman on a vessel in the coastwise trade between ports in the same State if the withholding is under a voluntary agreement between the seaman and the employer of the seaman.

§ 11109. Attachment of wages

(a) Wages due or accruing to a master or seaman are not subject to attachment or arrestment from any court, except for an order of a court about the payment by a master or seaman of any part of the master's or seaman's wages for the support and maintenance of the spouse or minor children of the master or seaman, or both. A payment of wages to a master or seaman is valid, notwithstanding any prior sale or assignment of wages or any attachment, encumbrance, or arrestment of the wages.

(b) An assignment or sale of wages or salvage made before the payment of wages does not bind the party making it, except allotments authorized by section 10315 of this title.

(c) This section applies to a fisherman on a fishing vessel.

§ 11110. Seamen's clothing

The clothing of a seaman is exempt from attachments and liens. A person detaining a seaman's clothing shall be fined not more than $500, imprisoned for not more than 6 months, or both.

§ 11111. Limit on amount recoverable on voyage

When a seaman is on a voyage on which a written agreement is required under this part, not more than $1 is recoverable from the seaman by a person for a debt incurred by the seaman during the voyage for which the seaman is signed on until the voyage is ended.

CHAPTER 113—OFFICIAL LOGBOOKS

Sec.
11301. Logbook and entry requirements.
11302. Manner of making entries.
11303. Penalties.

§ 11301. Logbook and entry requirements

(a) A vessel of the United States on a voyage between a port in the United States and a port in a foreign country, and a vessel of the United States of at least 75 gross tons on a voyage between a port of the United States on the Atlantic Ocean and a port of the United States on the Pacific Ocean, shall have an official logbook.

(b) The master of the vessel shall make or have made in the official logbook the following entries:

(1) each legal conviction of a seaman of the vessel and the punishment inflicted.
(2) each offense committed by a seaman of the vessel for which it is intended to prosecute or to enforce under a forfeiture, together with statements about reading the entry and the reply made to the charge as required by section 11502 of this title.
(3) each offense for which punishment is inflicted on board and the punishment inflicted.
(4) a statement of the conduct, character, and qualifications of each seaman of the vessel or a statement that the master declines to give an opinion about that conduct, character, and qualifications.
(5) each illness of or injury to a seaman of the vessel, the nature of the illness or injury, and the medical treatment.

(6) each death on board, with the cause of death, and if a seaman, the information required by section 10702 of this title.

(7) each birth on board, with the sex of the infant and name of the parents.

(8) each marriage on board, with the names and ages of the parties.

(9) the name of each seaman who ceases to be a crewmember (except by death), with the place, time, manner, and the cause why the seaman ceased to be a crewmember.

(10) the wages due to a seaman who dies during the voyage and the gross amount of all deductions to be made from the wages.

(11) the sale of the property of a seaman who dies during the voyage, including a statement of each article sold and the amount received for the property.

(12) when a marine casualty occurs, a statement about the casualty and the circumstances under which it occurred, made immediately after the casualty when practicable to do so.

§ 11302. Manner of making entries

Each entry made in the official logbook—

(1) shall be made as soon as possible after the occurrence;

(2) if not made on the day of the occurrence, shall be dated and state the date of the occurrence;

(3) if the entry is about an occurrence happening before the vessel's arrival at the final port of discharge, shall be made not later than 24 hours after the arrival;

(4) shall be signed by the master; and

(5) shall be signed by the chief mate or another seaman.

§ 11303. Penalties

(a) A master failing to maintain an official logbook as required by this part is liable to the United States Government for a civil penalty of $200.

(b) A master failing to make an entry in the vessel's official logbook as required by this part is liable to the Government for a civil penalty of $200.

(c) A person is liable to the Government for a civil penalty of $150 when the person makes, procures to be made, or assists in making, an entry in the vessel's official logbook—

(1) later than 24 hours after the vessel's arrival at the final port of discharge; and

(2) that is about an occurrence that happened before that arrival.

CHAPTER 115—OFFENSES AND PENALTIES

§ 11501. Penalties for specified offenses

When a seaman lawfully engaged commits any of the following offenses, the seaman shall be punished as specified:

(1) For desertion, the seaman forfeits any part of the money or property the seaman leaves on board and any part of earned wages.

(2) For neglecting or refusing without reasonable cause to join the seaman's vessel or to proceed to sea in the vessel, for absence without leave within 24 hours of the vessel's sailing from a port (at the beginning or during the voyage), or for absence without leave from duties and without sufficient reason, the seaman forfeits from the seaman's wages not more than 2 days' pay or a sufficient amount to defray expenses incurred in hiring a substitute.

(3) For quitting the vessel without leave after the vessel's arrival at the port of delivery and before the vessel is placed in security, the seaman forfeits from the seaman's wages not more than one month's pay.

(4) For willful disobedience to a lawful command at sea, the seaman, at the discretion of the master, may be confined until the disobedience ends, and on arrival in port forfeits from the seaman's wages not more than 4 days' pay or, at the discretion of the court, may be imprisoned for not more than one month.

(5) For continued willful disobedience to lawful command or continued willful neglect of duty at sea, the seaman, at the discretion of the master, may be confined, on water and 1,000 calories, with full rations every 5th day, until the disobedience ends, and on arrival in port forfeits, for each 24 hours' continuance of the disobedience or neglect, not more than 12 days' pay or, at the discretion of the court, may be imprisoned for not more than 3 months.

(6) For assaulting a master, mate, pilot, engineer, or staff officer, the seaman shall be imprisoned for not more than 2 years.

(7) For willfully damaging the vessel, or embezzling or willfully damaging any of the stores or cargo, the seaman forfeits from the seaman's wages the amount of the loss sustained and, at the discretion of the court, may be imprisoned for not more than 12 months.

(8) For smuggling for which a seaman is convicted causing loss or damage to the owner or master, the seaman is liable to the owner or master for the loss or damage, and any part of the seaman's wages may be retained to satisfy the liability. The seaman also may be imprisoned for not more than 12 months.

§ 11502. Entry of offenses in logbook

(a) When an offense listed in section 11501 of this title is committed, an entry shall be made in the vessel's official logbook—

(1) on the day of the offense;

(2) stating the details;

(3) signed by the master; and

(4) signed by the chief mate or another seaman.

(b) Before arrival in port if the offense was committed at sea, or before departure if the offense was committed in port and the offender is still on the vessel—

(1) the entry shall be read to the offender;

(2) the offender shall be given a copy; and

(3) the offender shall be given the opportunity to reply.

(c) After subsection (b) of this section has been complied with, an entry shall be made in the official logbook—

(1) stating that the entry about the offense was read and a copy provided to the offender;

(2) stating the offender's reply;

(3) signed by the master; and

(4) signed by the chief mate or another seaman.

(d) In a subsequent legal proceeding, if the entries required by this section are not produced or proved, the court may refuse to receive evidence of the offense.

§ 11503. Duties of consular officers related to insubordination

(a) A consular officer shall use every means to discountenance insubordination on vessels of the United States, including employing the aid of local authorities.

(b) When a seaman is accused of insubordination, a consular officer shall inquire into the facts and proceed as provided in section 11106 of this title. If the consular officer discharges the seaman, the officer shall endorse the agreement required by this part and enter in the vessel's official logbook the cause and particulars of the discharge.

§ 11504. Enforcement of forfeitures

When an offense by a seaman also is a criminal violation, it is not necessary that a criminal proceeding be brought to enforce a forfeiture.

§ 11505. Disposal of forfeitures

(a) Money, property, and wages forfeited under this chapter for desertion may be applied to compensate the owner of master of the vessel for expenses caused by the desertion. The balance shall be transferred to the Secretary when the voyage is completed, as prescribed by the Secretary.

(b) Within one month of receiving the balance under subsection (a) of this section, the Secretary shall transfer the balance to the appropriate district court of the United States. If it appears to the district court that the forfeiture was imposed properly, the property transferred may be sold in the same manner prescribed for the disposition of the property of deceased seamen. The court shall deposit in the Treasury as miscellaneous receipts the proceeds of the sale and any money and wages transferred to the court.

(c) When an owner or master fails to transfer the balance as required under subsection (a) of this section, the owner or master is liable to the United States Government for a civil penalty of 2 times the amount of the balance, recoverable by the Secretary in the same manner that seaman's wages are recovered.

(d) In all other cases of forfeiture of wages, the forfeiture shall be for the benefit of the owner of the vessel.

§ 11506. Carrying sheath knives

A seaman in the merchant marine may not wear a sheath knife on board a vessel without the consent of the master. The master of a vessel of the United States shall inform each seaman of this prohibition before engagement. A master failing to advise a seaman is liable to the United States Government for a civil penalty of $50.

§ 11507. Surrender of offending officers

When an officer of a vessel of the United States (except the master) has violated section 2191 of title 18, and the master has actual knowledge of the offense or if complaint is made within 3 days after reaching port, the master shall surrender the offending officer to the proper authorities. If the master fails *to use diligence* to comply with this section and the offender escapes, the owner, the master, and the vessel are liable for damages to the individual unlawfully punished.

PART H—IDENTIFICATION OF VESSELS

CHAPTER 121—DOCUMENTATION OF VESSELS

§ 12101. Related terms in other laws

When used in a law, regulation, document ruling, or other offical act referring to the documentation of a vessel—

(1) "certificate of registry", "register", and "registry" mean a registry as provided in section 12105 of this title.

(2) "license", "enrollment and license", "license for the coastwise (or coasting) trade", and "enrollment and license for the coastwise (or coasting) trade" mean a coastwise license as provided in section 12106 of this title.

(3) "enrollment and license to engage in the foreign and coastwise (or coasting) trade on the northern, northeastern, and northwestern frontiers, otherwise than by sea" means a Great Lakes license as provided in section 12107 of this title.

(4) "license for the fisheries" and "enrollment and license for the fisheries" mean a fishery license as provided in section 12108 of this title.

(5) "yacht" means a pleasure vessel even if not documented.

§ 12102. Vessels eligible for documentation

A vessel of at least 5 net tons not registered under the laws of a foreign country is eligible for documentation if the vessel is owned by—

(1) an individual who is a citizen of the United States;

(2) an association, trust, joint venture, or other entity—

(A) all of whose members are citizens of the United States; and

(B) that is capable of holding title to a vessel under the laws of the United States or of a State;

(3) a partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States;

(4) a corporation established under the laws of the United States or of a State, whose president or other chief executive officer and chairman of its board of directors are citizens of the United States and no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum;

(5) the United States Government; or

(6) the government of a State.

§ 12103. Certificates of documentation

(a) On application by the owner of a vessel eligible for documentation, the Secretary shall issue a certificate of documentation of one of the types specified in sections 12105–12109 of this title.

(b) The Secretary may prescribe the form of, the manner of filing, and the information to be contained in, applications for certificates of documentation.

(c) Each certificate of documentation shall—

(1) contain the name, the home port, and a description of the vessel;

(2) identify the owner of the vessel; and

(3) contain additional information prescribed by the Secretary.

(d) The Secretary shall prescribe procedures to ensure the integrity of, and the accuracy of information contained in, certificates of documentation.

(e) The owner and master of a documented vessel shall make the vessel's certificate of documentation available for examination as the law or Secretary may require.

§ 12104. Effect of documentation

A certificate of documentation is—

(1) conclusive evidence of nationality for international purposes, but not in a proceeding conducted under the laws of the United States;

(2) except for a pleasure vessel license, conclusive evidence of qualification to be employed in a specified trade; and

(3) not conclusive evidence of ownership in a proceeding in which ownership is in issue.

§ 12105. Registry

(a) A registry may be issued for a vessel eligible for documentation.

(b) A vessel for which a registry is issued may be employed in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef.

(c) On application of the owner of a vessel that qualifies for a coastwise license under section 12106 of this title, a Great Lakes license under section 12107 of this title, or a fishery license under section 12108 of this title, the Secretary may issue a registry appropriately endorsed authorizing the vessel to be employed in the coastwise trade, the Great Lakes trade, or the fisheries, as the case may be.

(d) Except as provided in sections 12106–12108 of this title, a foreign built vessel registered under this section may not engage in the coastwise trade, the Great Lakes trade, or the fisheries.

§ 12106. Coastwise licenses and registry

(a) A coastwise license or, as provided in section 12105(c) of this title, an appropriately endorsed registry, may be issued for a vessel that—

(1) is eligible for documentation;

(2)(A) was built in the United States; or

(B) if not built in the United States, was captured in war by citizens of the United States and lawfully condemned as prize, was adjudged to be forfeited for a breach of the laws of the United States, or qualified for documentation under section 4136 of the Revised Statutes (46 App. U.S.C. 14); and

(3) otherwise qualifies under laws of the United States to be employed in the coastwise trade.

(b) Subject to the laws of the United States regulating the coastwise trade and the fisheries, only a vessel for which a coastwise license or an appropriately endorsed registry is issued may be employed in—

(1) the coastwise trade; and

(2) the fisheries.

§ 12107. Great Lakes licenses and registry

(a) A Great Lakes license or, as provided in section 12105(c) of this title, an appropriately endorsed registry, may be issued for a vessel that—

(1) is eligible for documentation;

(2)(A) was built in the United States; or

(B) if not built in the United States, was captured in war by citizens of the United States and lawfully condemned as prize, was adjudged to be forfeited for a breach of the laws of the United States, or qualified for documentation under section 4136 of the Revised Statutes (46 App. U.S.C. 14); and

(3) otherwise qualifies under the laws of the United States to be employed in the coastwise trade.

(b) Subject to the laws of the United States regulating the coastwise trade, trade with Canada, and the fisheries, only a vessel for which a Great Lakes license or an appropriately endorsed registry is issued may be employed on the Great Lakes and their tributary and connecting waters in—

(1) the coastwise trade;

(2) trade with Canada; and

(3) the fisheries.

§ 12108. Fishery licenses and registry

(a) A fishery license or, as provided in section 12105(c) of this title, an appropriately endorsed registry, may be issued for a vessel that—

(1) is eligible for documentation; and

(2)(A) was built in the United States; or

(B) if not built in the United States, was captured in war by citizens of the United States and lawfully condemned as prize, was adjudged to be forfeited for a breach of the laws of the United States, or qualified for documentation under section 4136 of the Revised Statutes (46 App. U.S.C. 14); and

(3) otherwise qualifies under the laws of the United States to be employed in the fisheries.

(b) Subject to the laws of the United States regulating the fisheries, only a vessel for which a fishery license or an appropriately endorsed registry is issued may be employed in the fisheries.

§ 12109. Pleasure vessel licenses

(a) A pleasure vessel license may be issued for a vessel that is—

(1) eligible for documentation; and

(2) to be operated only for pleasure.

(b) A licensed pleasure vessel may proceed between a port of the United States and a port of a foreign country without entering or clearing with the Customs Service.

(c) The Secretary may prescribe by regulation reasonable fees for issuing, renewing, or replacing a pleasure vessel license, or for providing any other service related to a pleasure vessel license. The fees shall be based on the costs of the service provided.

§ 12110. Limitations on operations authorized by certificates

(a) A vessel may not be employed in a trade except a trade covered by the certificate of documentation issued for that vessel. A documented pleasure vessel may be operated only for pleasure. However, a certificate of documentation may be exchanged, under regulations prescribed by the Secretary, for another type of certificate of documentation or endorsed appropriately for a trade for which the vessel qualifies.

(b) A barge qualified to be employed in the coastwise trade may be employed, without being documented, in that trade on rivers, harbors, lakes (except the Great Lakes), canals, and inland waters.

(c) When a vessel is employed in a trade not covered by the certificate of documentation issued for that vessel, or a documented pleasure vessel is operated except for pleasure, the vessel and its equipment are liable to seizure by and forfeiture to the United States Government.

(d) A documented vessel may be placed under the command only of a citizen of the United States.

§ 12111. Invalidation of certificates of documentation

(a) A certificate of documentation is invalid if the vessel for which it is issued—

(1) no longer meets the requirements of this chapter and regulations prescribed under this chapter applicable to that certificate of documentation; or

(2) is placed under the command of a person not a citizen of the United States.

(b) Except as provided by section 30(O) of the Merchant Marine Act, 1920 (46 App. U.S.C. 961(a)), an invalid certificate of documentation shall be surrendered as provided by regulations prescribed by the Secretary.

§ 12112. Vessels procured outside the United States

(a) The Secretary and the Secretary of State, acting jointly, may provide for the issuance of an appropriate document for a vessel procured outside the United States meeting the ownership requirements of section 12102 of this title.

(b) Subject to limitations the Secretary may prescribe, a vessel for which an appropriate document is issued under this section may proceed to the United States and engage en route in the foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef. On the vessel's arrival in the United States, the document shall be surrendered as provided by regulations prescribed by the Secretary.

(c) A vessel for which a document is issued under this section is subject to the jurisdiction and laws of the United States. However, the Secretary may suspend for a period of not more than 6 months, the application of a vessel inspection law carried out by the Secretary or regulations prescribed under that law if the Secretary considers the suspension to be in the public interest.

§ 12113. Ports of documentation

The Secretary shall designate ports of documentation in the United States at which vessels may be documented and instruments affecting title to, or interest in, documented vessels may be recorded. The Secretary—

(1) shall specify the geographic area to be served by each designated port; and

(2) may discontinue, relocate, or designate additional ports of documentation.

§ 12114. Home ports

(a) The port of documentation selected by an owner of a vessel and approved by the Secretary for the documentation of the vessel is the vessel's home port.

(b) Once a vessel's home port is established, it may not be changed without the approval of the Secretary.

§ 12115. Names of vessels

(a) The name of the vessel selected by the owner and approved by the Secretary for the documentation of the vessel is the vessel's name of record.

(b) Once a vessel's name of record is established, it may not be changed without the approval of the Secretary.

(c) The Secretary may prescribe by regulation a reasonable fee for changing a documented vessel's name of record.

§ 12116. Numbers, signal letters, and identification markings

(a) The Secretary shall maintain a numbering system for the identification of a documented vessel and shall assign a number to each documented vessel.

(b) The Secretary may maintain a system of signal letters for a documented vessel.

(c) The owner of a documented vessel shall affix to the vessel and maintain in the manner prescribed by the Secretary the number assigned and any other identification markings the Secretary may require.

§ 12117. Recording of United States built vessels

The Secretary may provide for the recording and certifying of information about vessels built in the United States that the Secretary considers to be in the public interest.

§ 12118. Registration of funnel marks and house flags

The Secretary shall provide for the registration of funnel marks and house flags by owners of vessels.

§ 12119. List of documented vessels

The Secretary shall publish periodically a list of all documented vessels and information about those vessels that the Secretary considers pertinent or useful. The list shall contain a notation clearly indicating all vessels classed by the American Bureau of Shipping.

§ 12120. Reports

To ensure compliance with this chapter and laws governing the qualifications of vessels to engage in the coastwise trade and the fisheries, the Secretary may require owners and masters of documented vessels to submit reports in any reasonable form and manner the Secretary may prescribe.

§ 12121. Regulations

The Secretary may prescribe regulations to carry out this chapter.

§ 12122. Penalties

(a) A person that violates this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $500.

(b) When the owner of a vessel knowingly falsifies or conceals a material fact, or makes a false statement or representation about the documentation of the vessel, that vessel and its equipment are liable to seizure by and forfeiture to the United States Government.

(c) When a certificate of documentation is knowingly and fraudulently used for a vessel, that vessel and its equipment are liable to seizure by and forfeiture to the Government.

CHAPTER 123—NUMBERING UNDOCUMENTED VESSELS

§ 12301. Numbering vessels

An undocumented vessel equipped with propulsion machinery of any kind shall have a number issued by the proper issuing authority in the State in which the vessel principally is operated.

§ 12302. Standard numbering system

(a) The Secretary shall prescribe by regulation a standard numbering system for vessels to which this chapter applies. On application by a State, the Secretary shall approve a State numbering system that is consistent with the standard numbering system. In carrying out its numbering system, a State shall adopt any definitions of relevant terms prescribed by regulations of the Secretary.

(b) A State with an approved numbering system is the issuing authority within the meaning of this chapter. The Secretary is the issuing authority in a State in which a State numbering system has not been approved.

(c) When a vessel is numbered in a State, it is deemed in compliance with the numbering system of a State in which it temporarily is operated.

(d) When a vessel is removed to a new State of principal operation, the issuing authority of that State shall recognize the validity of the number issued by the original State for 60 days.

(e) If a State has a numbering system approved after the Secretary issues a number, the State shall recognize the validity of the number issued by the Secretary for one year.

(f) When the Secretary decides that a State numbering system is not being carried out consistent with the standard numbering system or the State has changed the system without the Secretary's approval, the Secretary may withdraw approval after giving notice to the State, in writing, stating the reasons for the withdrawal.

§ 12303. Exemption from numbering requirements

(a) When the Secretary is the authority issuing a number under this chapter, the Secretary may exempt a vessel or class of vessels from the numbering requirements of this chapter under conditions the Secretary may prescribe.

(b) When a State is the issuing authority, it may exempt from the numbering requirements of this chapter a vessel or class of vessels exempted under subsection (a) of this section or otherwise as permitted by the Secretary.

§ 12304. Certificates of numbers

(a) A certificate of number is granted for a number issued under this chapter. The certificate shall be pocket-sized, shall be at all times available for inspection on the vessel for which issued when the vessel is in operation, and may be valid for not more than 3 years. The certificate of number for a vessel less than 26 feet in length and leased or rented to another for the latter's noncommercial operation of less than 7 days may be retained on shore by the vessel's owner or representative at the place from which the vessel departs or returns to the possession of the owner or the owner's representative. A vessel that does not have the certificate of number on board shall be identified when in operation, and comply with requirements, as the issuing authority prescribes.

(b) The owner of a vessel numbered under this chapter shall provide—

(1) the issuing authority notice of the transfer of any part of the owner's interest in the vessel or of the destruction or abandonment of the vessel, within a reasonable time after the transfer, destruction, or abandonment; and

(2) notice of a change of address within a reasonable time of the change, as prescribed by regulation.

§ 12305. Displaying numbers

A number required by this chapter shall be painted on, or attached to, each side of the forward half of the vessel for which it was issued, and shall be the size, color, and type as may be prescribed by the Secretary. No other number may be carried on the forward half of the vessel.

§ 12306. Safety certificates

When a State is the authority issuing a number under this chapter, it may require that the individual in charge of a numbered vessel have a valid safety certificate issued under conditions set by the issuing authority, except when the vessel is subject to manning requirements under part F of this subtitle.

§ 12307. Regulations on numbering and fees

The authority issuing a number under this chapter may prescribe regulations and establish fees to carry out the intent of this chapter. The fees shall apply equally to residents and nonresidents of the State. A State issuing authority may impose only conditions for vessel numbering that are—

(1) prescribed by this chapter or regulations of the Secretary about the standard numbering system; or

(2) related to proof of payment of State or local taxes.

§ 12308. Providing vessel numbering and registration information

A person may request from an authority issuing a number under this chapter the numbering and registration information of a vessel that is retrievable from vessel numbering system records of the issuing authority. When the issuing authority is satisfied that the request is reasonable and related to a boating safety purpose, the information shall be provided on paying the cost of retrieving and providing the information requested.

§ 12309. Penalties

(a) A person willfully violating this chapter or a regulation prescribed under this chapter shall be fined not more than $5,000, imprisoned for not more than one year, or both.

(b) A person violating this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $1,000. If the violation involves the operation of a vessel, the vessel also is liable in rem for the penalty.

(c) When a civil penalty of not more than $200 has been assessed under this chapter, the Secretary may refer the matter of collection of the penalty directly to the United States magistrate of the jurisdiction in which the person liable may be found for collection procedures under supervision of the district court and under an order issued by the court delegating this authority under section 636(b) of title 28.

PART I—STATE BOATING SAFETY PROGRAMS

CHAPTER 131—RECREATIONAL BOATING SAFETY

Sec.

§ 13101. State recreational boating safety programs

(a) To encourage greater State participation and uniformity in boating safety and facility improvement efforts, and particularly to permit the States to assume the greater share of boating safety education, assistance, and enforcement activities, the Secretary shall carry out a national recreational boating safety and facilities improvement program. Under this program, the Secretary may make contracts with, and allocate and distribute amounts to, eligible States to assist them in developing, carrying out, and financing State recreational boating safety and facilities improvement programs.

(b) The Secretary shall establish guidelines and standards for the program. In doing so, the Secretary—

(1) shall consider, among other things, factors affecting recreational boating safety by contributing to overcrowding and congestion of waterways, such as the increasing number of recreational vessels operating on those waterways and their geographic distribution, the availability and geographic distribution of recreational boating facilities in and among applying States, and State marine casualty and fatality statistics for recreational vessels;

(2) shall consult with the Secretary of the Interior to minimize duplication with the purposes and expenditures of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4—4601-11) and with the guidelines developed under that Act; and

(3) shall maintain environmental standards consistent with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451-1464) and other laws and policies of the United States intended to safeguard the ecological and esthetic quality of the waters and wetlands of the United States.

(c) A State whose recreational boating safety and facilities improvement program has been approved by the Secretary is eligible for allocation and distribution of amounts under this chapter to assist that State in developing, carrying out, and financing its program. Matching amounts shall be allocated and distributed among eligible States by the Secretary as provided by section 13103 of this title.

§ 13102. Program acceptance

(a) The Secretary may make a contract with, and allocate and distribute amounts from the Fund established under section 13107 of this title to, a State that has an approved State recreational boating safety and facilities improvement program, if the State demonstrates to the Secretary's satisfaction that—

(1) the program submitted by that State is consistent with this chapter and chapters 61 and 123 of this title;

(2) amounts distributed will be used to develop and carry out a State recreational boating safety and facilities improvement program containing the minimum requirements of subsection (c), (d), or (f) of this section;

(3) sufficient State matching amounts are available from general revenue, undocumented vessel numbering and license fees, State marine fuels taxes, or from a fund constituted from the proceeds of those taxes and established to finance a State recreational boating safety and facilities improvement program; and

(4) the program submitted by that State designates a State lead authority or agency that will carry out or coordinate carrying the State recreational boating safety and facilities improvement program supported by financial assistance of the United States Government in that State, including the requirement that the designated State authority or agency submit required reports that are necessary and reasonable to carry out properly and efficiently the program and that are in the form prescribed by the Secretary.

(b) Amounts of the Government from sources (except sources referred to in subsection (a)(3) of this section) may not be used to provide a State's share of the costs of the program described under this section. State matching amounts committed to a program under this chapter may not be used to constitute the State's share of matching amounts required by another program of the Government.

(c) The Secretary shall approve a State recreational boating safety program, and the program is eligible to receive amounts authorized to be expended under section 13106 of this title, if the program includes—

(1) a vessel numbering system approved or carried out by the Secretary under chapter 123 of this title;

(2) a cooperative boating safety assistance program with the Coast Guard in that State;

(3) sufficient patrol and other activity to ensure adequate enforcement of applicable State boating safety laws and regulations;

(4) an adequate State boating safety education program; and

(5) a system, approved by the Secretary, for reporting marine casualties required under section 6102 of this title.

(d) The Secretary shall approve a State recreational boating facilities improvement program, and the program is eligible to receive amounts authorized to be expended under section 13106 of this title, if the program includes—

(1) a complete description of recreational boating facility improvement projects to be undertaken by the State; and

(2) consultation with State officials responsible for the statewide comprehensive outdoor recreation plan required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4—4601-11) and for any program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451-1464).

(e) The Secretary's approval under this section is a contractual obligation of the Government for the payment of the proportional share of the cost of carrying out the program.

(f)(1) A State may submit a combined program to the Secretary for the improvement of recreational boating safety and the improvement of recreational boating facilities in that State. The Secretary shall approve the program if it contains the minimum requirements set forth in subsections (c) and (d) of this section.

(2) Those parts of the combined program of a State that are designed to improve recreational boating safety are eligible to receive amounts authorized to be expended for State recreational boating safety programs under section 13106 of this title. The Secretary's approval of those parts is a contractual obligation of the Government for the payment of the proportional share of the cost of carrying out the State's recreational boating safety program under this chapter.

(3) Those parts of the combined program of a State that are designed to improve recreational boating facilities are eligible to receive amounts authorized to be expended for State recreational boating facilities im-

provement programs under section 13106 of this title. The Secretary's approval of those parts is a contractual obligation of the Government for the payment of the proportional share of the cost of carrying out the State's recreational boating facilities program under this chapter.

§ 13103. Allocations

(a) The Secretary shall allocate amounts available for allocation and distribution under this chapter for State recreational boating safety programs as follows:

(1) One-third shall be allocated equally each fiscal year among eligible States.

(2) One-third shall be allocated among eligible States that maintain a State vessel numbering system approved under chapter 123 of this title and a marine casualty reporting system approved under this chapter so that the amount allocated each fiscal year to each eligible State will be in the same ratio as the number of vessels numbered in that State bears to the number of vessels numbered in all eligible States.

(3) One-third shall be allocated so that the amount allocated each fiscal year to each eligible State will be in the same ratio as the amount of State amounts expended or obligated by the State for the State recreational boating safety program during the prior fiscal year bears to the total State amounts expended or obligated during that fiscal year by all eligible States for State recreational boating safety programs.

(b) The Secretary shall allocate the amounts available for allocation and distribution under this chapter for State recreational boating facilities improvement programs as follows:

(1) One-third shall be allocated equally each fiscal year among eligible States.

(2) One-third shall be allocated so that the amount allocated each fiscal year to each eligible State will be in the same ratio as the number of vessels numbered in that State bears to the number of vessels numbered in all eligible States.

(3) One-third shall be allocated so that the amount allocated each fiscal year to each eligible State shall be in the same ratio as the State amounts expended or obligated by the State for a recreational boating facilities improvement program approved under this chapter during the prior fiscal year bears to the total State amounts expended or obligated during that fiscal year by all eligible States for recreational boating facilities improvement programs.

(c) The amount received by a State under this section in a fiscal year may be not more than one-half of the total cost incurred by that State in developing, carrying out, and financing that State's recreational boating safety and facilities improvement program in that fiscal year.

(d) An allocation or distribution of amounts under this section may not be made to a State to maintain boating facilities under that State's approved recreational boating safety and facilities improvement program.

(e) The Secretary may allocate not more than 5 percent of the amounts available for allocation and distribution in a fiscal year for national boating safety activities of national nonprofit public service organizations.

(f) The Secretary may expend from the amounts available for allocation and distribution in a fiscal year those amounts necessary to carry out this chapter. However, the amounts expended in a fiscal year to carry out this chapter may be not more than $250,000 or 2 percent of the amounts available for allocation and distribution in that fiscal year, whichever is greater.

§ 13104. Availability of allocations

(a) Amounts allocated to a State shall be available for obligation by that State for a period of 3 years after the date of allocation. Amounts unobligated by the State at the end of the 3 years shall be withdrawn by the Secretary and shall be available with other amounts to be allocated by the Secretary during that fiscal year.

(b) Amounts available to the Secretary that have not been allocated at the end of a fiscal year shall be carried forward as part of the total allocation of amounts for the next fiscal year that may be expended under this chapter.

§ 13105. Computation decisions about State amounts expended

(a) Consistent with regulations prescribed by the Secretary, the computation by a State of amounts expended or obligated for the State recreational boating safety and facilities improvement program shall include—

(1) the acquisition, maintenance, and operating costs of land, facilities, equipment, and supplies;

(2) personnel salaries and reimbursable expenses;

(3) the costs of training personnel;

(4) public boat safety education;

(5) the costs of carrying out the program; and

(6) other expenses that the Secretary considers appropriate.

(b) The Secretary shall decide an issue arising out of the computation made under subsection (a) of this section.

§ 13106. Authorization of contract spending

(a) To provide financial assistance for State recreational boating safety and facilities improvement programs, the Secretary may expend, subject to amounts provided in appropriations laws for liquidating contract authority, an amount equal to the revenues accruing each fiscal year from the taxes under section 4041(b) of the Internal Revenue Code of 1954 (26 U.S.C. 4041(b)) from special motor fuels used as fuel in motor boats and under section 4081 of that Code (26 U.S.C. 4081) from gasoline used as fuel in motor boats.

(b) Of the amounts available for allocation and distribution for recreational boating safety and facilities improvement programs, one-third shall be allocated for recreational boating safety programs and two-thirds shall be allocated for recreational boating facilities improvement programs.

(c) Amounts authorized to be expended for State recreational boating safety and facilities improvement programs remain available until expended and are deemed to have been expended only if an amount equal to the total amounts authorized to be expended under this section for the fiscal year in question and all prior fiscal years have been obligated. Amounts previously obligated but released by payment of a final voucher or modification of a program acceptance shall be credited to the balance of unobligated funds and shall be immediately available for expenditure.

§ 13107. National Recreational Boating Safety and Facilities Improvement Fund

There is established in the Treasury a separate fund known as the National Recreational Boating Safety and Facilities Improvement Fund consisting of amounts paid into it as provided in section 209(f)(5) of the Highway Revenue Act of 1956. Amounts in the Fund are available for making expenditures as provided in section 13106 of this title.

§ 13108. Computing amounts allocated to States and State records requirements

(a) Amounts allocated and distributed under section 13103 of this title shall be computed and paid to the States as follows:

(1) During the last quarter of a fiscal year and on the basis of computations made under section 13105 of this title and submitted by the States, the Secretary shall determine the percentage of the amounts available for the next fiscal year to which each eligible State is entitled.

(2) Notice of the percentage and of the dollar amount, if it can be determined, for each State shall be provided to the States at the earliest practicable time.

(3) If the Secretary determines that an amount made available to a State for a prior fiscal year is greater or less than the amount that should have been made available to the State for the prior fiscal year, because of later or more accurate State expenditure information, the amount for the current fiscal year may be increased or decreased by the appropriate amount.

(b) The Secretary shall schedule the payment of amounts, consistent with the program purposes and applicable regulations prescribed by the Secretary of the Treasury, to minimize the time elapsing between the transfer of amounts from the Treasury and the subsequent disbursement of the amounts by a State.

(c) The Secretary shall notify a State authority or agency that further payments will be made to the State only when the program complies with the prescribed standards or a failure to comply substantially with standards is corrected if the Secretary, after reasonable notice to the designated State authority or agency, finds that—

(1) the State recreational boating safety and facilities improvement program submitted by the State and accepted by the Secretary has been so changed that it no longer complies with this chapter or standards prescribed by regulations; or

(2) in carrying out the State recreational boating safety and facilities improvement program, there has been a failure to comply substantially with the standards prescribed by regulations.

(d) The Secretary shall provide for the accounting, budgeting, and other fiscal procedures that are necessary and reasonable to carry out this section properly and efficiently. Records related to amounts allocated under this chapter shall be made available to the Secretary and the Comptroller General to conduct audits.

§ 13109. Consultation, cooperation, and regulation

(a) In carrying out responsibilities under this chapter, the Secretary may consult with State and local governments, public and private agencies, organizations and committees, private industry, and other persons having an interest in boating safety and facilities improvement.

(b) The Secretary may advise, assist, and cooperate with the States and other interested public and private agencies in planning, developing, and carrying out boating safety and facilities improvement programs. Acting under section 141 of title 14, the Secretary shall ensure the fullest cooperation between the State and United States Government authorities in promoting boating safety by making agreements and other arrangements with States when possible. Sub-

ject to chapter 23 of title 14, the Secretary may make available, on request of a State, the services of members of the Coast Guard Auxiliary to assist the State in promoting boating safety on State waters.

(c) The Secretary may prescribe regulations to carry out this chapter.

§ 13110. National Boating Safety Advisory Council

(a) The Secretary shall establish a National Boating Safety Advisory Council. The Council shall consist of not more than 21 members appointed by the Secretary, whom the Secretary considers to have a particular expertise, knowledge, and experience in boating safety.

(b)(1) Insofar as practical and to ensure balanced representation, the Secretary shall appoint members equally from—

(A) State officials responsible for State boating safety programs;

(B) recreational vessel manufacturers; and

(C) boating organizations and members of the general public.

(2) Additional individuals from the sources referred to in paragraph (1) of this subsection may be appointed to panels of the Council to assist the Council in performing its duties.

(3) At least once a year, the Secretary shall publish a notice in the Federal Register soliciting nominations for membership on the Council.

(c) In addition to the consultation required by section 4302 of this title, the Secretary shall consult with the Council on other major boating safety matters related to this chapter. The Council may make available to Congress information, advice, and recommendations that the Council is authorized to give to the Secretary.

(d) When attending meetings of the Council, a member of the Council or a panel may be paid at a rate not more than the rate for GS-18. When serving away from home or regular place of business, the member may be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5 for individuals employed intermittently in the Government service. A payment under this section does not make a member of the Council an officer or employee of the United States Government for any purpose.

[PART J—RESERVED FOR MEASUREMENT OF VESSELS]

MISCELLANEOUS PROVISIONS

SEC. 2. (a) Laws effective after December 31, 1982, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

(b) A reference to a law replaced by this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision of this Act.

(c) An order, rule, or regulation in effect under a law replaced by this Act continues in effect under the corresponding provision of this Act until repealed, amended, or superseded.

(d) An action taken or an offense committed under a law replaced by this Act is deemed to have been taken or committed under the corresponding provision of this Act.

(e) An inference of legislative construction is not to be drawn by reason of the caption or catch line of a provision enacted by this Act.

(f) If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.

(g)(1) Part B of subtitle II and sections 7306 (related to able seaman sail) and 7311 of title 46 (as enacted by section 1 of this Act) take effect April 15, 1984, or when regulations for sailing school vessels under part B are effective, whichever is earlier.

(2) Section 3715(a) of title 46 (as enacted by section 1 of this Act) is effective on the day after the effective date of the regulations prescribed by the Secretary under section 3715(b) of title 46.

(h) Chapter 63 of title 46 (as enacted by section 1 of this Act) does not supersede section 304(a)(1)(E) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1903(a)(1)(E)).

(i) Each offshore supply vessel described in section 3302(g) of title 46 (as enacted by section 1 of this Act), that was registered with the Secretary of Transportation under section 4426a(7) of the Revised Statutes but that has not been inspected by the Secretary shall be held to be in compliance with all applicable vessel inspection laws pending verification by actual inspection or until one year after the date of enactment of this Act, whichever is earlier.

(j) Within 2 years after the date of enactment of this Act, the Federal Maritime Commission and the Secretary of Transportation each shall submit to Congress a proposed codification of the laws within their respective jurisdictions related to shipping and maritime matters.

CONFORMING CROSS-REFERENCES

SEC. 3. (a) Section 5549(4) of title 5, United States Code is amended to read as follows:

"(4) sections 2111 and 2112 of title 46; and".

(b) Section 10542(c) of title 49, United States Code, is amended—

(1) in the matter before clause (1), by striking "tank vessels" and substituting "a tank vessel"; and

(2) by striking clause (2) and substituting:

"(2) having a certificate of inspection issued under part B of subtitle II of title 46 endorsed to show that the vessel complies with chapter 37 of title 46.".

REPEALS

SEC. 4. (a) The repeal of a law by this Act may not be construed as a legislative implication that the provision was or was not in effect before its repeal.

(b) The laws specified in the following schedule are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the date of enactment of this Act and except as provided by section 2 of this Act:

SCHEDULE OF LAWS REPEALED

Revised Statutes, section	Revised Statutes, section	Revised Statutes, section	Revised Statutes, section	Revised Statutes, section
4131	4431	4474	4520	4560
4235	4432	4477	4521	4561
4236	4433	4478	4522	4562
4237	4434	4480	4523	4563
4250	4437	4484	4524	4564
4251	4438	4485	4525	4565
4290	4438a	4486	4526	4566
4291	4439	4487	4527	4567
4292	4440	4488	4528	4568
4399	4441	4490	4529	4569
4400	4442	4491	4530	4570
4401	4443	4494	4535	4571
4403	4444	4496	4537	4572

SCHEDULE OF LAWS REPEALED—Continued

Revised Statutes, section	Revised Statutes, section	Revised Statutes, section	Revised Statutes, section	Revised Statutes, section
4405	4445	4497	4538	4577
4406	4446	4499	4539	4578
4407	4447	4500	4540	4580
4408	4448	4501	4541	4581
4409	4449	4502	4542	4582
4410	4450	4503	4543	4583
4411	4451	4504	4544	4595
4417	4453	4505	4545	4596
4417a	4454	4506	4546	4597
4418	4455	4507	4547	4600
4419	4456	4508	4548	4603
4420	4457	4509	4549	4604
4421	4460	4510	4550	4605
4423	4462	4511	4551	4607
4424	4463	4512	4552	4608
4425	4464	4513	4553	4610
4426	4465	4514	4554	4611
4426a	4466	4515	4555	4612
4427	4467	4516	4556	5294
4428	4468	4517	4557	
4429	4469	4518	4558	
4430	4472	4519	4559	

STATUTES AT LARGE

Date	Chapter or Public Law	Section	Statutes at Large Volume	Page
1874				
June 9	260		18	64
June 20	344	10, 11, 12, 13	18	128
1875				
Feb. 18	80	1 (only the part amending R.S. 4250).	18	320
1877				
Feb. 27	69	1 (only the part amending R.S. 4290, 4409, 4415, 4420, 4421, 4440, 4441, 4467, 4472, 4490, 4513, 4522, 4605)	19	251, 252
1882				
Aug. 2	374		22	186
Aug. 7	433	1 (only the paragraph amending R.S. 4429).	22	310
Do	441	1, 2	22	346
1884				
June 26	121	1–11, 19, 20, 26	23	53, 58, 59
July 5	221	2, 8 (a), (b), (d)	23	118
1885				
Feb. 11	55		23	298
1886				
June 19	421	1, 2, 3, 13, 14, 18	24	79, 82, 83
July 9	755		24	129
1888				
Apr. 4	61	2	25	80
Oct. 18	1197		25	564
1889				
Mar. 2	418		25	1012
1890				
June 25	616		26	180
Aug. 19	801		26	320
Sept. 4	875		26	425
Dec. 22	26		26	692
1891				
Feb. 21	250		26	765
Mar. 3	521		26	833
1892				
Apr. 11	41		27	16
1894				
Jan. 22	16		28	28
1895				
Feb. 18	97		28	667
Feb. 28	139		28	690
Mar. 2	186	(only the last paragraph of this chapter).	28	843
1896				
May 28	255		29	188
1897				
Mar. 3	389	1, 2, 4, 6–8, 14, 19	29	687, 689, 690, 691

STATUTES AT LARGE—Continued

Date	Chapter or Public Law	Section	Statutes at Large Volume	Page
1898				
Mar. 23	86		30	340
Dec. 21	28		30	755
Do	29		30	764
1900				
Feb. 14	19		31	29
Mar. 23	90		31	50
1901				
Feb. 20	386		31	799
Feb. 23	465		31	800
1902				
Feb. 15	23		32	34
1904				
Apr. 11	1140		33	168
Apr. 13	1252		33	174
Apr. 26	1603		33	308
1905				
Feb. 18	586		33	720
Mar. 3	1453		33	1022
Do	1454	1–4	33	1023
Do	1456	1, 2	33	1027
Do	1457	2–8	33	1029
1906				
Mar. 17	955		34	68
Apr. 26	1875		34	137
May 16	2460		34	193
May 28	2565		34	204
June 11	3071		34	230
June 28	3583	4	34	551
1907				
Jan. 25	398		34	864
Feb. 8	892		34	881
Feb. 19	991		34	897
Mar. 4	2929		34	1411
1908				
Apr. 2	123		35	55
May 28	212	2, 3, 4, 10, 12, 13	35	425, 428
1909				
Mar. 2	244		35	686
Mar. 4	321	254–267	35	1140
1910				
June 25	402		36	831
1911				
Mar. 4	237	1 (in part)	36	1229 (only the first complete paragraph on this page)
1912				
May 22	130		37	116
July 23	250		37	199
Aug. 1	268	2	37	242
1913				
Jan. 24	10		37	650
Mar. 3	118	1	37	732
Mar. 4	142	1 (in part)	37	785 (only the proviso in the fourth paragraph on this page)
1914				
July 17	146		38	511
Aug. 18	256		38	698
Oct. 22	334		38	765
Do	336		38	766
1915				
Mar. 3	79		38	893
Mar. 4	153	1–15, 19	38	1164, 1185
Do	184		38	1216
1916				
June 12	141		39	224
1917				
Feb. 14	63		39	918
1918				
Mar. 29	30		40	499
May 11	72		40	548
June 10	95		40	602

STATUTES AT LARGE—Continued

Date	Chapter or Public Law	Section	Statutes at Large Volume	Page
1919				
Oct. 25	82		41	305
1920				
June 5	250	25, 26, 31, 32	41	998, 1006
1922				
June 1	204	T.I. (in part)	42	603 (only the words after the semicolon in the second paragraph on this page)
1923				
Jan. 3	21	T.I. (in part)	42	1072 (only the proviso in the first paragraph on this page)
1925				
Mar. 2	387		43	1093
1928				
May 28	824		45	789
1930				
May 7	227	(only clause (2), amending R.S. 4578).	46	261
1932				
June 30	314	501, 502(b)	47	415
1933				
June 13	61		48	125
1934				
Mar. 5	40		48	395
1936				
May 27	463		49	1380
June 20	628		49	1544
June 23	729		49	1889
June 25	816		49	1930
June 29	858	302, 1307(c), (d)(2), (3), 1308(e).	49	1992
1937				
Mar. 24	49		50	49
May 22	237		50	199
July 29	536		50	544
1938				
May 9	189		52	343
May 11	194		52	345
June 23	597		52	944
June 25	679	19(a)	52	1087
1939				
Mar. 29	26		53	554
May 31	158		53	794
July 17	316		53	1049
Aug. 1	409		53	1145
Aug. 7	558		53	1257
Aug. 10	643		53	1343
1940				
Apr. 25	155		54	163
Oct. 9	777		54	1023
Oct. 17	896		54	1200
1941				
Sept. 24	416		55	729
Do	417		55	730
1946				
Aug. 7	783		60	883
1948				
May 12	286		62	232
1950				
Sept. 23	1002		64	980
Sept. 29	1109		64	1081
1951				
Jan. 10	1222		64	1239
1952				
July 16	887		66	730

STATUTES AT LARGE—Continued

Date	Chapter or Public Law	Section	Statutes at Large Volume	Page
1954				
July 15	512		68	484
Aug. 30	1076	1(29)	68	968
Aug. 31	1171		68	1047
1955				
June 8	133		69	86
1956				
May 10	258		70	151
June 4	350		70	223
1958				
Aug. 23	85–739		72	833
Sept. 2	85–911		72	1754
1959				
Sept. 9	86–244		73	475
Sept. 14	86–263		73	551
Sept. 22	86–364		73	646
1960				
June 30	86–555		74	259
Sept. 2	86–688		74	735
1961				
Aug. 30	87–177		75	410
1963				
Sept. 23	88–128		77	164
1965				
July 30	89–99	2, 5	79	424
1966				
Oct. 15	89–670	6(e)(4)	80	939
Nov. 6	89–777	1, 4	80	1356, 1358
1968				
Apr. 25	90–293		82	107
July 11	90–397	1, 3, 4	82	341
July 27	90–435		82	449
1969				
Dec. 24	91–154		83	427
1970				
Oct. 27	91–513	1102(q)	84	1293
Dec. 31	91–612	3	84	1835
1971				
Aug. 10	92–75		85	213
1972				
July 7	92–339	1	86	423
July 10	92–340	201	86	427
1973				
July 9	93–65	6	87	151
Aug. 16	93–106		87	350
Nov. 16	93–153	401	87	589
1974				
Aug. 10	93–370		88	423
Oct. 1	93–430	6(2)–(4)	88	1182
1975				
Jan. 3	93–633	113(a), (f)	88	2161, 2163
Aug. 9	94–85		89	426
1976				
Sept. 10	94–406	8(a)(1)–(3)	90	1236
Oct. 17	94–535		90	2496
Oct. 18	94–550	8, 9	90	2535
1977				
July 1	95–61	7(b)	91	260
1978				
June 30	95–308	7	92	359
1980				
Oct. 6	96–378		94	1513
Oct. 14	96–451	202	94	1987
Dec. 12	96–594	101–125	94	3453
1982				
Oct. 15	97–322	208(a)	96	1590

● Mr. PACKWOOD. Mr. President, I am proud of the bill now being brought before the Senate and urge its passage.

This bill revises, consolidates, and reenacts those laws related to marine safety and seamen's welfare. In many

ways this is a truly historic piece of legislation.

Since Teddy Roosevelt first tried in 1908, numerous administrations and Congresses have attempted to reorganize and consolidate those laws in title 46 of the United States Code pertaining to vessels and seamen.

Past attempts have been bogged down by controversial or substantive changes or by deleterious amendments. Therefore, it has been the intention of the sponsors of S. 46 to avoid certain highly controversial substantive revisions which, due to opposition, would endanger the bill's chances of passage.

In the 193 years since the enactment of the first Federal maritime statutes, there has been no complete revision of the shipping laws. The various statutes passed by Congress from time to time since 1790 have been included in title 46 of the United States Code, together with the sections of the Revised Statutes, without any attempt to delete, coordinate, consolidate, or rewrite conflicting provisions. This is the first step in producing an understandable and useful compendium of maritime laws.

I. LEGISLATIVE HISTORY

The present initiative reflects a 20-year effort by the Commerce Committee, in cooperation with the Coast Guard, to organize and modernize existing laws enforced by the Coast Guard governing commercial shipping and recreational boating.

An excellent history of the tortured past of the maritime statutory codification efforts can be found in "Conquering the Maze: A Proposal for Reorganization of the U.S. Shipping Laws," by C. J. Maguire and R. E. McDaniel, "Proceedings of the Marine Safety Council," volume 38, No. 4, June 1981.

In 1929, and again during the late 1940's, the Coast Guard attempted to codify Federal shipping laws. In 1967 and 1971, the Senate committee considered, and then abandoned, the initiative.

Consideration of S. 46 by the Senate today is a result of long and careful scrutiny by all members of the maritime community, and a concentrated bipartisan effort in both the Senate and the House over the past 2 years.

During the 97th Congress, S. 2660 was introduced on July 22, 1982, by myself, and Senators STEVENS and GORTON. At my request, CRS completed a comparative analysis of S. 2660 and title 46, United States Code.

On November 22, a Commerce Committee Print was published. (Marine Safety and Seamen's Welfare Laws—With Corresponding Sections of the United States Code—And Brief Explanation.) This Committee Print provided a side-by-side comparison of the Staff Working Draft of S. 2660 and the corresponding United States Code section. Most importantly, it provided an explanation for each section of S. 2660 which differed from, or was organized differently than, current law. Finally a complete table of current United States Code sections and their disposition of the Staff Working Draft of S. 2660 was included in the committee print.

Following industry and labor comments on the committee print, and a great deal of work by the Coast Guard, S. 46 was introduced on January 26, 1983. Again, public comment was requested, and the bill was revised prior to being reported out of the Commerce Committee on April 12, 1983 (Senate Report 98-56). On May 5, 1983, S. 46 was passed by the Senate with technical amendments. Upon arriving at the House of Representatives, it was referred to the House Merchant Marine and Fisheries Committee.

Meanwhile, a companion bill identical to S. 2660 had been introduced in the House of Representatives. Hearings were held in the fall of 1982. Based on these hearings, Congressmen STUDDS, JONES, BIAGGI, DON YOUNG, and FORSYTHE, introduced H.R. 2247 on March 24, 1983. Additional hearings were held on April 28, 1983, and H.R. 2247 was reported out by the House Merchant Marine and Coast Guard Subcommittees on June 21, 1983. It was finally favorably reported by the full House Merchant Marine and Fisheries Committee on June 28, 1983.

The version reported by the full committee reflected the continuing cooperative effort by House and Senate staff. It reflected the many changes adopted following original introduction of S. 46 on the Senate side, and H.R. 2247 on the House side. At the June 28 markup, the House Merchant Marine and Fisheries Committee amended S. 46 by substituting a revised version agreed to by House and Senate staff. Thus, it was S. 46 that was ultimately reported out of the House Merchant Marine and Fisheries Committee and brought to the House floor. On August 1, 1983, S. 46 was passed by the House of Representatives.

Upon our passage of S. 46 today, the bill will proceed to the President, whom I am told is eager to sign this legislation into law.

II. CAPT. CLINT MAGUIRE

House and Senate staff have worked together long and diligently on this matter, and the Coast Guard and the Department of Transportation have been more than cooperative. However, it is clear that one individual has made an exceptional contribution, far beyond anything required or expected of him. Capt. Clint Maguire, U.S. Coast Guard—retired, has worked on this project much longer than the current legislative initiative would suggest.

For many years in the Coast Guard he addressed the need to review, revise, and consolidate the maritime laws. Much later, in retirement, he was the primary resource for the Congressional Research Service for its analysis of title 46 of the United States Code. It was based on that CRS report to the Senate Commerce Committee that S. 2660 was first introduced.

Subsequently, Clint Maguire continued to be an invaluable resource to the Senate. It is fair to say that S. 46 would not now be ready for final passage if it were not for the tireless efforts of Captain Maguire. His only compensation is the satisfaction of seeing a long-awaited, much-needed initiative finally and properly completed. The Senate owes Captain Maguire its gratitude.

III. PURPOSE

The purpose of S. 46 is threefold. Primarily, to reorganize certain shipping laws as they appear in title 46 of the United States Code to make them more easily understood by the affected public. S. 46 remedies the internal inconsistencies of title 46 by providing clear definitions for all terms used throughout the title, by combining widely dispersed laws into groupings by subject, and by gathering the numerous exceptions to any general rules in one place.

A second purpose of the bill is to apply these laws to the maritime community in an easier, quicker, and less expensive fashion. With the goal of regulatory reform, this bill will lead to cost savings for the Federal Government and efficiencies for the maritime industry. A streamlined title 46, whose laws are organized so that they can be easily found and understood, reduces the need to resort to litigation to define the law, and provides the potential for later delegation of responsibility to the private sector, such as has been accomplished with private inspection and documentation societies.

The third purpose of this bill is to update or repeal outmoded law. Antiquated sections of title 46 have been identified in this bill. Where they no longer serve any purpose, and do not give rise to opposition which might serve to undermine the basic effort, these sections have been repealed. Other significant, although ancient, sections have been retained and updated.

IV. SCOPE AND SUBJECT MATTER OF S. 46

The bill before you has made new law only to the extent that it will add a new subtitle to title 46 of the United States Code. No substantive changes of a controversial nature were intended in its drafting. Rather, the attempt has been to modernize and reorganize the scope and format of the existing

law. Three sections of the bill have no basis in preexisting legislation in sections 6302, 7702, 103201, but have been added to aid in the smooth application and implementation of this legislation. One section of the bill, section 7305, reinstates in statutory form an oath for merchant mariners which did exist in earlier laws, disappeared through congressional omission, but has continued to be applied by the Coast Guard without objection. Other examples of reforms in the existing law are the modernization of the nutritional standards for seamen, the removal of gender-based terminology, the removal of antiquated titles, such as collector of customs and board of local inspectors, and the abolishment of leg irons and bread and water as a means of punishment. We have simplified seamen's rights of appeal by bringing them in line with their current application under the Administrative Procedure Act and Reorganization Plan 3-46 which abolished the Bureau of Marine Inspection and Navigation and the officers and the boards thereof, and transferred all functions of the Bureau, of its officers and its boards, and the Secretary of Commerce pertaining thereto, to the Commandant of the U.S. Coast Guard.

The following table shows those areas of the law generally covered by this bill:

Part A—General Provisions.
Part B—Inspection and Regulation of Vessels.
Part C—Reserved.
Part D—Marine Casualties and Accidents.
Part E—Licenses, Certificates, and Merchant Mariners' Documents.
Part F—Manning of Vessels.
Part G—Merchant Seamen Protection and Relief.
Part H—Identification of Vessels.
Part I—State Boating Safety Programs.

V. CONCLUSION

S. 46 has been the subject of many years of careful scrutiny and comment from the maritime community. This bill is the embodiment of a consensus that has existed for decades within the maritime community in that those laws affecting vessels and seamen were in dire need of consolidation and reform. It is a bipartisan product of the House and the Senate and is long overdue. I urge its passage by unanimous consent.●

● Mr. LONG. Would the Senator yield for questions?

Mr. PACKWOOD. Yes, I yield to my distinguished colleague from Louisiana, a member of the Merchant Marine Subcommittee.

Mr. LONG. I note that in certain instances, the House changed the language of S. 46, as we passed it on April 28. these language changes include the use of the term "tank vessel" and "tanker" in the House bill, whereas in our bill we used only the term "tank vessel." I ask the Senator, what is the origin of the term "tank vessel" and the relationship of that term to the term "tanker"?

Mr. PACKWOOD. The Senator is correct that our original bill and the House bill are different in this regard. The House version is an accurate expression of current law. "Tank vessel" is a term incorporating the provisions of current law (46 U.S.C. 391a(3)), which set forth the kind of vessel to which section 5 of the Port and Tanker Safety Act of 1978 applies. Instead of repeating the lengthy provisions of current law to describe such a vessel, the House decided to incorporate the provisions in the term "tank vessel" in order to make chapter 37 more concise. This concise term is currently used in the Coast Guard's regulations implementing the 1978 act, beginning at 46 CFR 30.01. Thus, the use of the term "tank vessel" does not amend, expand, or alter current law, or current Coast Guard inspection procedures or standards.

For example, it is the committee's intent that the use of the term "tank vessel" will not result in more vessels being inspected as if they were "tankers." The two terms "tank vessel" and "tanker" are not interchangeable for purposes of chapter 37 because a "tank vessel" may be a vessel which is not a "tanker."

Mr. LONG. I thank the Senator for his answer. Another example of the House version being different from the language in our bill is where the House bill uses the term "able seamen offshore supply vessel" whereas our bill used the term "able seamen—special (offshore supply vessels)." Does this difference represent any change in current law?

Mr. PACKWOOD. No.

Mr. LONG. Finally, I inquire of a provision that was not in our bill, but is in the House bill. The provision is subparagraph 3316(c)(2)(A). This provision states that when the Secretary of Transportation delegates vessel inspection responsibilities to a classification society, such as the American Bureau of Shipping, the "delegate shall maintain in the United States complete files of all information derived from or necessarily connected with the inspection or examination for at least 2 years after the vessel ceases to be certified." Is this provision a change in current law?

Mr. PACKWOOD. No, the language you cite tracks current law 46 U.S.C. 9(d).

Let me make a general response to the Senator's questions, which are helpful to our deliberations. Even though we are adopting the House version of S. 46, I assure the Senator and the Senate that the intent as reflected in our bill is the same as the intent of the House bill.

Mr. LONG. I appreciate the Senator's statement.●

Mr. BAKER. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

SENATE JOINT RESOLUTION 136 PLACED ON CALENDAR

Mr. BAKER. Mr. President, I propose to discharge the Judiciary Committee from further consideration of Senate Joint Resolution 136 and then to place that item on the calendar if the minority leader has no objection.

Mr. BYRD. Mr. President, I have no objection.

I ask unanimous consent that I be added as a cosponsor to that legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I thank the Chair.

Mr. BAKER. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 136, a joint resolution to recognize Volunteer Firefighters Recognition Day, as a tribute to the bravery and self-sacrifice of our volunteer firefighters, and that it be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT OF TITLE XVIII OF THE SOCIAL SECURITY ACT

Mr. BAKER. Mr. President, I propose now to take up H.R. 3677 if the minority leader is agreeable.

Mr. BYRD. Mr. President, there is no objection to consideration of this measure.

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 3677, an act to amend title XVIII of the Social Security Act to increase the cap amount allowable for reimbursement of hospices under the medicare program.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 3677) to amend title XVIII of the Social Security Act to increase the cap amount allowable for reimbursement of hospices under the medicare program.

The Senate proceeded to consider the bill.

Mr. DOLE. Mr. President, I would like to ask for immediate consideration of H.R. 3677, a bill to amend title XVIII of the Social Security Act to increase the cap amount allowable for reimbursement of hospices under the medicare program.

The purpose of the bill is to correct a technical error in section 122 of Public Law 97-248, the Tax Equity and Fiscal Responsibility Act of 1982. The

bill, which is identical to a provision previously agreed to by the Senate Finance Committee, as part of S. 951, and introduced as a separate bill, S. 1592, would establish a hospice cap at $6,500, indexed in future years by the medical care component of the Consumer Price Index.

As many in this body know, section 122 of Public Law 97-248 provided for reimbursement under the medicare program for hospice care. A cap on the maximum amount of reimbursement to each hospice program was established based upon the number of medicare enrollees in each program. The intent of the cap was to insure that payments for hospice care would not exceed what would have been expended by medicare if the patient had been treated in a conventional setting.

When the legislation was agreed to last year it was understood, based on information provided to the Ways and Means Committee and to the Finance Committee, that the payment cap would equal about $7,600.

However, we have since discovered that the information provided to us at that time was incorrect. As a result the formula, as we designed it, provided for a cap amount for 1984 that was far too low to allow hospices to provide adequate care.

The bill before us corrects the consequences of that original error in cost estimates. It establishes a specific cap amount which is a reasonable reflection of the costs of care; and a cap amount which will increase or decrease in future years to reflect medical care price changes.

Medicare payment for hospice services is scheduled to begin in November 1983. I expect, as do many others, that changes in the legislation are likely to be necessary based on the results of the soon-to-be-completed demonstration. Hearings will be held on the implementing regulations as soon as they are published for comment; however, I believe it appropriate to correct what we know to be an error in calculating the payment amount, before the publication of those draft regulations.

I am committed to fulfilling the promise we made to the terminally ill last year. In order to do so we need to correct any possible errors in the legislation as quickly as possible.

● Mr. HEINZ. Mr. President, I am pleased to support H.R. 3677, which would reestablish the intent of Congress by correcting the medicare reimbursement rate for the hospice benefit we enacted last year as part of TEFRA.

While the implementing regulations have yet to be released for public comment, I strongly urge my colleagues to support this legislation that would simply raise the reimbursement cap to $6,500. The bill has strong support in both the Senate and House of Representatives. It is purely a technical correction, and has no budgetary impact. More importantly, without timely passage of this technical amendment, medicare reimbursement for hospice care would be inadequate.

At issue, since passage of the Tax Equity and Fiscal Responsibility Act of 1982, it has come to our attention that the per capita cost prepared by the Congressional Budget Office was incorrect. The result was that using our original formula, the reimbursement cap would have been $4,200 instead of $7,200—an amount that clearly, would have been insufficient to cover hospice services.

This technical correction establishes a $6,500 cap, which takes into account the most current available data. And, to insure an ongoing, adequate level of reimbursement, this cap will be indexed annually according to the medical care component of the Consumer Price Index.

As chairman of the Special Committee on Aging and one of the principal architects of the hospice benefit for terminally ill medicare beneficiaries, I commend Senator DOLE and my colleagues in the other Chamber for their prompt action on this important matter. But, I am extremely disturbed over the administration's attempts to stall publication of the regulations necessary to implement this program on November 1.

Mr. President, it is my understanding that Secretary Heckler has been working with the Office of Management and Budget to release the regulations for public comment. Those of us in Congress who worked long and hard to see this benefit enacted, now demand the opportunity to work with the Department of Health and Human Services to be sure that implementation of the new hospice benefit is not thwarted by unreasonable regulatory delays.

If the regulatory delays cannot be resolved expeditiously, the hospice law takes effect November 1, with or without any guidance to medicare beneficiaries and providers of hospice services. While this administration quibbles over reimbursement rates, terminally ill medicare beneficiaries will be denied the humane alternative that hospice care provides. Let us not allow administrative delays to undermine the good work of Congress.●

Mr. BAKER. Mr. President, I ask unanimous consent that the bill be considered as having been read the first and second times and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill (H.R. 3677) was read the third time and passed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

H.R. 2230 PLACED ON CALENDAR

Mr. BAKER. Mr. President, earlier, I had a conversation with the distinguished minority leader about the next matter. I believe, based on those conversations, that perhaps the minority leader will not object to this request:

I ask unanimous consent that when the Senate receives H.R. 2230, the Civil Rights Commission authorization bill, it be placed on the calendar.

Mr. BYRD. Mr. President, reserving the right to object, and I shall not object, I had indicated to the distinguished majority leader that I was going to initiate rule XIV procedures and put this on the calendar. He has beaten me to the punch. I am in accord with his action.

Mr. BAKER. I thank the minority leader for his statement. I am delighted to perform that act.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECORD TO REMAIN OPEN UNTIL 6 P.M.

Mr. BAKER. Mr. President, since the Senate is about to go out unless there is other business to be transacted today, I ask unanimous consent that, if the Senate does go out before the hour of 6 p.m., the RECORD remain open until that time for the introduction of bills and resolutions and for the filing of statements and reports by committees.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, there are one or two things on the Executive Calendar today. More than that, I see.

Mr. President, I inquire of the minority leader if he is in a position to consider the nomination of John P. Vukasin, of California, under the Judiciary, to be U.S. district judge, the nomination of William Perry Pendley, of Wyoming, to be an Assistant Secretary of the Interior under the Department of the Interior; Judith W. Rogers to be an associate judge of the District of Columbia Court of Appeals; A. Franklin Burgess, of the District of Columbia, to be an associate judge of the Superior Court of the District of Columbia; James Brian Hyland, of Virginia, to be Inspector General of the Department of Labor, and certain nominations placed on the Secretary's desk in the Coast Guard.

Mr. BYRD. Mr. President, two nominees on the calendar have not been

cleared, and I refer to the Judiciary and the Department of the Interior. All other nominations, including the one that the distinguished majority leader did not mention under African Development Bank are cleared. All are cleared including that one.

Mr. BAKER. I thank the minority leader.

Mr. BYRD. Except the two which I enumerated.

Mr. BAKER. Mr. President, as I understand it then, we would be cleared by the minority to consider by unanimous consent Calendar Orders No. 250, 251, 252, and the nominations placed on the Secretary's desk in the Coast Guard?

Mr. BYRD. The majority leader is correct.

EXECUTIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate go into executive session for the purpose of considering the nominations just identified by me.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate proceeded to the consideration of executive business.

Mr. BAKER. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

Mr. BYRD. There is no objection.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

The nominations confirmed en bloc are as follows:

THE JUDICIARY

Judith W. Rogers, of the District of Columbia, to be an associate judge of the District of Columbia Court of Appeals for the term of 15 years.

A. Franklin Burgess, of the District of Columbia, to be an associate judge of the Superior Court of the District of Columbia for the term of 15 years.

[NEW REPORTS]

DEPARTMENT OF LABOR

James Brian Hyland, of Virginia, to be Inspector General, Department of Labor.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE COAST GUARD

Coast Guard nominations beginning Mark A. Johnson, and ending David H. Boyd, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of August 1, 1983.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the nominations were confirmed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The PRESIDING OFFICER, Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION OF TIME FOR ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I am going to extend the time for the transaction of routine morning business if the minority leader has no objection.

I ask unanimous consent that the time for the transaction of routine morning business may be extended until not later than 6 p.m. this evening under the same terms and conditions.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. BAKER. Mr. President, I think we will be able to take the Senate out in a few minutes. I might describe the situation as I see it at this moment.

The Senate will convene tomorrow at 9:30 a.m. under the order previously entered.

After the recognition of the two leaders under the standing order, four Senators will be recognized on special orders of not to exceed 15 minutes.

After the execution of the special orders, it is anticipated that a time for the transaction of routine morning business will be provided for.

After the close of the time for the transaction of routine morning business, the business before the Senate will be the motion to proceed to the consideration of the Radio Marti bill, pursuant to the provisions of rule XXII, after the invocation of cloture.

I say for the benefit of Senators, however, that I anticipate and fully expect that that matter may be put over by unanimous consent, so that the Senate can resume consideration of the Interior appropriations bill. No such order has been entered yet, but I expect that it may be, based on the fact that the clearance process on this side of the aisle—and I understand on the other side, perhaps—has indicated that that is the desire of the parties principally involved. I hope we can finish the Interior appropriations bill tomorrow. Tomorrow is Thursday, and Senators should be on notice of the possibility of a late evening.

Mr. President, the Department of Defense authorization conference report may reach us tomorrow; and if it does, it is the intention of the leadership to try to reach that measure as well.

That is about as good as I can do with the situation at this moment.

I yield to the minority leader.

Mr. BYRD. Mr. President, is the distinguished and very able majority leader in a position to indicate what his plans are for Friday?

Mr. BAKER. Mr. President, as Members know, the adjournment resolution sent us by the House of Representatives provides for adjournment over until September 12, beginning today, tomorrow, or Friday. It is obvious that we are not going to be able to do that today, but it is possible that we can do it by tomorrow, especially if we are willing to stay late in order to accomplish that purpose. In order to do so, we would need to take care of the Interior appropriations bill, to do the DOD conference report, if we have it—if it is here—and perhaps other things that it would appear desirable to do.

It is still distinctly possible that we will be in on Friday, but I am prepared to say that it is my hope that we can finish Thursday evening; and it would be my intention to stay a little later than usual in order to accomplish that purpose, if possible.

Mr. BYRD. So it would not to be appropriate for me to start a rumor that we are definitely going out tomorrow evening?

Mr. BAKER. No. The rumor would be helpful if it were along these lines: We are going to go out Thursday evening if everybody will settle down and do everything we ask them to do.

Mr. BYRD. Which includes the Interior appropriations bill.

Mr. BAKER. Yes, it does.

Mr. BYRD. I thank the majority leader.

Mr. BAKER. I thank the minority leader.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

IDEAS HAVE CONSEQUENCES

Mr. SYMMS. Mr. President, I have always subscribed to the view, expressed in the title of Richard Weaver's book, that "Ideas Have Consequences." Some of the ideas which have had the greatest consequences for the good of our society in recent years—and have had profound influence on my own thinking—are the ideas on political and economic freedom expressed by Leonard Read, whom I loved and considered more than a teacher, but a friend.

Leonard Read, who died recently, was the father of the Foundation for Economic Education, in Irvington on the Hudson in New York, which, for nearly 40 years has been the source for some of the most cogent and origi-

nal thinking and writing on the subject of liberty. Over the years he planted countless seeds and inspired others to nurture the harvest. The result is a new generation of independent thinkers who have changed the political and economic climate of this country, notwithstanding and not to mention the fact that our own President Reagan is a product of a friendship that goes back very far with the late Leonard Read, and I think it is fair to say that Leonard Read had an influence on the President's thinking in his formative years in the positions that he has come to.

Today, the virtues of the free market and the failures of socialism are more widely recognized, thanks in large measure to the labors of Leonard Read and his disciples at the Foundation for Economic Education and the good news is that they shall carry on under the very able leadership of Bob Anderson and Ed Opitz.

Mr. President, several days ago, in the Wall Street Journal, the very distinguished journalist, Vermont Royster, paid tribute to Leonard Read and the legacy he has left us in words that are more eloquent than I can muster. I ask unanimous consent that Royster's column be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THINKING THINGS OVER—THE HALF-FORGOTTEN MEN

(By Vermont Royster)

I'm not sure that "conservative", the word so often applied, is the right one for the mood of the country these past few years. I am sure we are seeing a revolt against the politics that brought us repeated inflation, rising taxes, neglect of our defenses and a growing intrusion of government into everyone's life. It's a mood no politician, Democratic or Republican, can afford to ignore.

But Ronald Reagan and his followers, whatever they may think, didn't create it. They have only taken advantage of it more perceptively than their opponents.

For that mood, by whatever name you give it, has been a long time growing. The seeds of it were sown over many years by a few independent minds long derided by politicians and weighty political writers. Even now their names are only half-remembered.

One of those sowers was Leonard Read, who died just recently. No profound intellectual, he, but a man of perceptive mind who believed that if people would only look they would see that socialism, in all its guises, wore tattered clothes. So in the middle 1940s he launched the Foundation for Economic Education, run initially on a shoestring. Out of it poured a richness of books and pamphlets to teach the virtues of liberty, economic as well as political.

Some of those books he wrote himself. His little essay on the making of a pencil-showing how the marketplace brought together goods and technology from all over the world to make this simple tool ubiquitous and cheap—remains a classic.

Read's Foundation was fertile in offspring. One was spawned by an associate, F. A. Harper, who created the Institute for Humane Studies in California. Although he too has passed on, his institute remains and flourishes.

Len Read inspired the great Austrian economist—and later Nobel prize winner—Friedrich von Hayek to invite an international group of libertarian economists and philosophers to gather in Switzerland to exchange ideas. Out of this grew the Mont Pelerin Society, which still meets. Numbered amoung its first members, then young but now famous and covered with honors (including also a Nobel prize), was Milton Friedman.

Not all those who planted seeds of new (old) ideas about the virtues of economic freedom founded institutions or gathered formal disciples around them. Other labored privately, lifting their voices whenever they could find a platform or people who would listen.

One of these is Henry Hazlitt, currently approaching his ninetieth year with no diminution of mind and spirit. He first gained recognition as a literary critic (I still cherish his "Anatomy of Criticism," read in my college days). He served on The Wall Street Journal before its present editors were born and was for a time an editorial writer on both the old New York Herald-Tribune and the New York Times.

Then some 40 years ago he wrote a small volume, "Economics In One Lesson," which is almost what its title states. Anyway, there is no better introduction to the fallacies of socialist economics or the merits of the marketplace as a regulator of man's economic labors.

Perhaps the oddest of those sowers of seeds was Eric Hoffer, another who died this year. What made him seem odd was that he was a "man of the people" who worked all his life as a day laborer and who had no formal education. Not at all the sort of background from which you would expect an intellectual to spring, especially one to take up cudgels against the collectivist political philosophy that once so dominated the self-styled intellectual community.

Yet Hoffer did. His first book to find print, "The True Believer," was a penetrating critique of the collective fanaticism that inspires mass movements and mass thinking. In others he defended capitalism as the best guarantor of individual freedom, praised America when it was unfashionable to do so. Naturally he was viewed as a curiosity, tagged as the "longshoreman's philosopher," as if the two words were necessarily contradictory. Though Ronald Reagan awarded him the Medal of Freedom in his old age, he was hardly the darling of the true believers in the ideal that the country needed direction from an elite gathered in Washington.

Obviously this doesn't exhaust the list of the once lonesome voices raised to question the philosophy of statism that dominated political thinking for more than a generation. You would have to include Lawrence Fertig and John Chamberlain among others; and, once upon a time, William Buckley before he became a television character and a spinner of spy yarns. Mr. Buckley's National Review gave a platform to many such voices.

You would also have to include some more obscure in the popular attention, like Ludwig von Mises, who along with Hayek put socialism in all its forms under a disciplined microscope. They provided the intellectual underpinning for the rebirth of what, in shorthand, can be called free market economics.

How much influence any of these, individually, have had on the altered public mood, political or otherwise, is impossible to measure. But that altogether they contributed to the changing political climate I have no doubt.

For a long time they were prophets without honor. They were mostly ignored, even sneered at. Even today their faith in a free economy isn't shared everywhere. But no one in the academic, economic or political communities now scoffs at their ideas. Slowly the seeds they sowed have found roots, often among people who never heard of them.

Yet they persevered and together wrought a revolution in our ways of thinking about the way we manage the nation's affairs. It would be a pity if they were forgotten.

Mr. SYMMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION OF ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, it looks like there will be some reason for us to remain in session for just a little longer.

I ask unanimous consent that the time for the transaction of routine morning business be extended until 6:30 p.m. under the same terms and conditions.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, I wish to report that a number of Senators are engaged in serious conversations now about the possibility of reviving the agriculture target price bill. I have just come from that meeting. I encouraged them to continue negotiations, but I pointed out to them that I have already announced there would be no more record votes tonight and that it is unlikely that anything can be worked out this evening that could be adopted by the Senate in a reasonable time.

In a moment I intend to ask the Senate to recess over until tomorrow. But before I do so, may I point out that if the negotiations by the interested Senators on the agriculture bill produce a result, it would be my hope that we could propound a unanimous-consent request in respect to that bill

shortly after we convene tomorrow. So Senators who may be listening in their offices or whose staff may be listening in the offices should be on the alert to the possibility of a unanimous-consent request in the morning to arrange a time and a method for the consideration of the agriculture target price bill. I am not certain that will occur but it could occur.

RECESS UNTIL TOMORROW AT 9:30 A.M.

Mr. BAKER. Mr. President, if no other Senator is now seeking recognition, I move in accordance with the previous order that the Senate now stand in recess until 9:30 a.m.

The motion was agreed to, and at 6:51 p.m., the Senate recessed until tomorrow, August 4, 1983, at 9:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate August 3, 1983:

DEPARTMENT OF LABOR

James Brian Hyland, of Virginia, to be Inspector General, Department of Labor.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

THE JUDICIARY

Judith W. Rogers, of the District of Columbia, to be an associate judge of the District of Columbia Court of Appeals for the term of 15 years.

A. Franklin Burgess, of the District of Columbia, to be an associate judge of the Superior Court of the District of Columbia for the term of 15 years.

IN THE COAST GUARD

Coast Guard nominations beginning Mark A. Johnson, and ending David H. Boyd, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 1, 1983.